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EXECUTORS AND ADMINISTRATORS

THEIR FUNCTIONS & LIABILITIES

OR

HOW TO PROVE A WILL

BY

G. F. EMERY, LL.M.

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PREFACE.

THE introduction of the series of Statutes dealing with real property and the administration of estates generally and especially the entire alteration of the laws relating to intestacy have made a new edition of this popular handbook imperative.

The new rules as to intestacy ought to be carefully studied by every one who possesses property of an appreciable value as the will made by Parliament for the public intestate may be far from carrying out the wishes of the majority. The only means by which to avoid the automatic action of this statutory will is to make a will dealing with everything. Where there are children and the property is not large, the passing of all personal chattels and £1,000 to a surviving husband or wife may be a great hardship on the children, while the trust of half the balance during the life of the survivor involves expense.

The fact that in the spring of 1926 it has been found necessary to introduce a Law of Property Amendment Bill shows the difficulty of dealing with complex problems by Act of Parliament, and the absence of finality in any attempted modification.

G. F. EMERY.

5 KING'S BENCH WALK,
TEMPLE, E.C.4.
August, 1926.

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EXECUTORS & ADMINISTRATORS

CHAPTER 1

PERSONAL REPRESENTATIVES

THE person or persons who are entrusted with the duty of arranging the affairs of a deceased person are called his personal representatives.

Except in the case of certain estates of very small value, personal representatives are necessary wherever there is property belonging to the deceased within the United Kingdom, so that the subject of this book is one in which a very large number of persons will at some time or other find themselves interested.

The deceased person may be testate, i.e., have left a properly executed will disposing of his property; or intestate, i.e., without having disposed of his property by will; or partly testate and partly intestate.

Every sane person of full age has by our law power to dispose of all his or her property by will, in any manner he or she may think fit, subject only to the rights of others, by contract or otherwise, and to the general rule as to perpetuities, which limits the time during which property may be tied up to the duration of a life or lives in being and twenty-one years afterwards.

FORMAL REQUIREMENTS FOR WILL

In order to be valid a will must be in writing, and signed at the foot or end by the testator, or by some

person in his presence and by his direction, and such signature must be made or acknowledged by the testator in the presence of two witnesses present at the same time, who must attest and subscribe their names to the will in the presence of the testator. No attestation clause is necessary, but its absence leads to difficulty at the time of probate, so that it should never be omitted. The following is an usual form, and should be written beneath or beside the signature of the testator :—" Signed and declared by the said A. B. (the testator) as and for his last will and testament (*or as and for a codicil to his said will*) in the presence of us, both being present at the same time, who in his presence, and at his request, and in the presence of each other, have hereunto subscribed our names as witnesses."

A testamentary disposition may be contained in a series of documents, but each of these must be executed in the manner above described ; the principal document is usually called the will, and the subsequent subsidiary ones are called codicils.

PERSONAL REPRESENTATIVES

Personal representatives are of two kinds — if appointed by the will of the deceased person they are called executors, if not so appointed they are called administrators.

EXECUTORS

An executor is a person appointed by the last will and testament (including any codicil attached thereto) of

a deceased person to carry out its provisions. Such appointment may be in express words, as " I appoint A. B. and C. D. my executors," or words to that effect, but this is not necessary.

An old book on the subject says : " If by any word or circumlocution he recommend or commit to one or more the charge and office which pertains to an executor, it amounteth to as much as the ordaining or constituting of him or them to be his executors : as if he declare by his will that A. B. shall have his goods after his death to pay his debts—or to that effect—or that A. B. shall have administration of his goods, he is thereby made executor."

The mere leaving of property to a person as trustee, without giving him any active duties in administering the estate is not, however, sufficient to make him an executor.

An executor informally appointed is called an executor according to the tenor, but he does not in any way differ from an executor expressly appointed ; there may be two executors of a will, one expressly appointed, and the other according to the tenor, who are equally entitled to probate.

A will may give some person power to nominate executors, and the persons so nominated will be duly appointed and entitled to probate as executors.

RIGHT TO EXECUTORS TO PROVE WILL

Executors have a right to prove the will and to administer the estate of the testator in preference to any one else ; and the fact that a man appointed

executor is a known bad character or bankrupt or insolvent is not alone sufficient to prevent his acting.

An executor can be excluded from probate if he be a lunatic, idiot, or imbecile.

The Administration of Estates Act, 1925, provides as follows:—

LITIGATION ON WILL

Section 16.—(1) While any legal proceeding touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any representation is pending, the Court may grant administration of the real and personal estate of the deceased to an administrator who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the real and personal estate, but shall be subject to the immediate control of the Court and act under its direction.

(2) The Court may assign to any administrator appointed under this section reasonable remuneration out of the real and personal estate of the deceased or the income thereof.

Section 17.—If, while any legal proceeding is pending in any Court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, that Court may order that the proceeding be continued by or against the new personal representative in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as that Court directs.

ABSENCE OF PERSONAL REPRESENTATIVE ABROAD

By *Section* 18.—(1) If at the expiration of twelve months from the death of a person, any personal representative of the deceased to whom representation has been granted is residing out of the jurisdiction of the High Court, the Court may, on the application of any creditor or person interested in the estate of the deceased, grant to him special administration in the form prescribed by probate rules of the real and personal estate of the deceased.

(2) The Court may, for the purpose of any legal proceeding to which the administrator under the special administration is a party, order the transfer into court of any money or securities, belonging to the estate of the deceased person, and all persons shall obey any such order.

(3) If the personal representative capable of acting as such returns to and resides within the jurisdiction of the High Court while any legal proceeding to which a special administrator is a party is pending, such representative shall be made a party to the legal proceeding, and the costs of and incidental to the special administration and any such legal proceeding shall be paid by such person and out of such fund as the Court in which the proceeding is pending directs.

GENERAL PROVISIONS

Section 15.—Where administration has been granted in respect of any real or personal estate of a deceased person, no person shall have power to bring any action

or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

Section 19.—Subject to the provisions of this Act as to settled land, administration with the will annexed shall continue to be granted in every case where such grant has heretofore been customary, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

Section 21.—Every person to whom administration of the real and personal estate of a deceased person is granted, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

NOT MORE THAN FOUR REPRESENTATIVES

Section 12.—(1) Representation shall not be granted to more than four persons in regard to the same property ; and administration shall, if any beneficiary is an infant or a life interest arises under the will or intestacy, be granted either to a trust corporation (with or without an individual) or to not less than two individuals :

Provided that the Court in granting administration may act on such *prima facie* evidence, furnished by the applicant or any other person, as to whether or not there is a minority or life interest, as may be prescribed by probate rules.

(2) If there is only one personal representative (not being a trust corporation) then, during the minority

of a beneficiary or the subsistence of a life interest, and until the estate is fully administered, the Court may on the application of any person interested or of the guardian, committee or receiver of any such person appoint in accordance with probate rules one or more personal representatives in addition to the original personal representative.

(3) This Section applies to grants of representation made after the commencement of this Act whether the testator or intestate died before or after such commencement.

(This Section does not appear to prevent probate being granted to a single executor, there being a distinction between administration and probate. A testator can trust whom he likes, but the Court must not put a single individual into office, and if moved for that purpose, may supplement the testator's choice.)

DEATH OF EXECUTOR

By *Section* 7.—(1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

This provision shall not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

(2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of representation is broken by—

(*a*) an intestacy; or

(*b*) the failure of a testator to appoint an executor; or

(*c*) the failure to obtain probate of a will;

but shall not be broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator—

(*a*) has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living;

(*b*) is, to the extent to which the estate whether real or personal of that testator has come to his hands, answerable as if he were an original executor.

TRUST CORPORATION EXECUTOR

By *Section* 14.—(1) Where a trust corporation is appointed an executor in a will, either alone or jointly with another person, the Court may grant probate to such corporation either solely or jointly with another person, as the case may require, and the corporation may act as executor accordingly.

(4) Any officer authorised for the purpose by such corporation or their directors or governing body may swear affidavits, give security, and do any other act or thing which the Court may require on behalf of the trust corporation with a view to the grant of probate or letters of administration to the corporation, and the acts of such officer shall be binding on the corporation,

and he shall be entitled to be kept indemnified by the corporation in regard to matters so authorised as aforesaid.

LIMITED REPRESENTATION

By *Section* 13.—Representation may be granted in respect of the real estate of a deceased person or any part thereof, and either separately or together with his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate only, and a grant of letters of administration to real estate may be limited in any way the Court thinks proper.

Provided that, where the estate of the deceased is known to be insolvent, the grant of representation to the real and personal estate shall not be severed except as regards a trust estate.

SETTLED LAND

When a person is tenant for life of land or tenant in tail of entailed land the fee simple of the land is under the Law of Property Act, 1925, and the Trustee Act, 1925, vested in him and passes on his death to his personal representatives. The property in which a life estate is held does not and entailed property may not pass under a will and neither can form part of the estate on an intestacy so that unless the personal representatives were the trustees of the settlement under which the property is held complications would arise. Entailed land is a trust estate when not dealt with by will and special provisions are made by the Act with relation to settled land in the following

Sections, which as will be seen leave no option to a testator.

Section 22.—(1) A testator may appoint, and in default of such express appointment shall be deemed to have appointed, as his special executors in regard to settled land, the persons, if any, who are at his death the trustees of the settlement thereof, and probate may be granted to such trustees specially limited to the settled land.

In this sub-section " settled land " means land vested in the testator which was settled previously to his death and not by his will.

(2) A testator may appoint other persons either with or without such trustees as aforesaid or any of them to be his general executors in regard to his other property and assets.

Section 23.—(1) Where settled land becomes vested in a personal representative, not being a trustee of the settlement, upon trust to convey the land to or assent to the vesting thereof in the tenant for life or statutory owner in order to give effect to a settlement created before the death of the deceased and not by his will, or would, on the grant of representation to him, have become so vested, such representative may—

(*a*) before representation has been granted, renounce his office in regard only to such settled land without renouncing it in regard to other property ;

(*b*) after representation has been granted, apply to the Court for revocation of the grant in regard to the settled land without applying in regard to other property.

(2) Whether such renunciation or revocation is made or not, the trustees of the settlement, or any person beneficially interested thereunder, may apply to the High Court for an order appointing a special or additional personal representative in respect of the settled land, and a special or additional personal representative, if and when appointed under the order, shall be in the same position as if representation had originally been granted to him alone in place of the original personal representative, if any, or to him jointly with the original personal representative, as the case may be, limited to the settled land, but without prejudice to the previous acts and dealings, if any, of the personal representative originally constituted of the effect of notices given to such personal representative.

(3) The Court may make such order as aforesaid subject to such security, if any, being given by or on behalf of the special or additional personal representative, as the Court may direct, and shall, unless the Court considers that special considerations apply, appoint such persons as may be necessary to secure that the persons to act as representatives in respect of the settled land shall, if willing to act, be the same persons as are the trustees of the settlement, and an office copy of the order when made shall be furnished to the Principal Probate Registry for entry, and a memorandum of the order shall be endorsed on the probate or administration.

(4) The person applying for the appointment of a special or additional personal representative shall give notice of the application to the Principal Probate Registry in the manner prescribed.

(5) Rules of Court may be made for prescribing for all matters required for giving effect to the provisions of this section, and in particular—

(*a*) for notice of any application being given to the proper officer ;

(*b*) for production of orders, probates, and administration to the registry ;

(*c*) for the endorsement on a probate or administration of a memorandum of an order, subject or not to any exceptions ;

(*d*) for the manner in which the costs are to be borne ;

(*e*) for protecting purchasers and trustees and other persons in a fiduciary position, dealing in good faith with or giving notices to a personal representative before notice of any order has been endorsed on the probate or administration or a pending action has been registered in respect of the proceedings.

Section 24.—(1) The special personal representatives may dispose of the settled land without the concurrence of the general personal representatives, who may likewise dispose of the other property and assets of the deceased without the concurrence of the special personal representatives.

(2) In this section the expression " special personal representatives " means the representatives appointed to act for the purposes of settled land and includes any original personal representative who is to act with an additional personal representative for those purposes.

INFANT EXECUTOR

An infant cannot hold any legal estate in land nor can he act as an executor.

By *Section* 20.—(1) Where an infant is appointed or becomes sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the Court thinks fit, until the infant attains the age of twenty-one years; at which time, and not before, probate of the will may be granted to him.

(2) The appointment in a will by a testator of an infant to be an executor shall not operate to transfer any interest in the property of the deceased to the infant or to constitute him a personal representative for any purpose unless and until probate is granted to him after he has attained full age.

RENUNCIATION OF PROBATE

The Court can call on anyone who has been named as an executor to prove or renounce probate, and any person named as executor has the right to renounce probate.

Section 5 of the Act provides that: Where a person appointed executor by a will

(i) survives the testator, but dies without having taken out probate of the will; or

(ii) is cited to take out probate of the will and does not appear to the citation; or

(iii) renounces probate of the will;

his rights in respect of the executorship shall wholly cease and the representation to the testator and the

administration of his real and personal estate shall devolve and be committed in like manner as if that person had not been appointed executor.

It appears however from the following Section 6 that the absoluteness of this provision is not complete, for—

Where an executor who has renounced probate has been permitted whether before or after the commencement of this Act to withdraw the renunciation and prove the will probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other personal representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration. See also *Section* 7, p. 13 *ante*.

PROBATE TEST OF AUTHORITY

By *Section* 8.—(1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual as if all the persons named as executors had concurred therein.

ADMINISTRATORS

Administrators are persons appointed by the Court to administer the estate of a deceased person; they

are of various kinds, but the most important are those appointed to act generally in the administration without any limit of time.

We will consider these first, and then briefly indicate the various kinds of administrators with limited powers. General administrators are divided into two main classes, according to whether the person whose estate they have to administer left a will or died intestate.

Where there is a will the administrators are called *Administrators cum testamento annexo*, and when appointed their powers, duties, and liabilities are the same as those of executors.

Where there is no will the administrators have no distinguishing title.

Administrators de bonis non.—We have seen that the executor of a sole executor is also executor to his testator; but this rule does not apply to administrators, and should a sole executor die without leaving an executor to represent him, or should a sole administrator die before the estate is fully administered, it is necessary for the Court to appoint a new administrator to carry on the administration. Such an administrator is called an *administrator de bonis non*, and may be appointed either *cum testamento* or on an intestacy. The rules regarding the appointment of an administrator *de bonis non* are exactly the same as those relating to the appointment of an original administrator and his duties are exactly the same as those of the original administrator except that if there be a will which has been proved the *administrator de bonis non* has not to prove it again.

Administrators cum testamento annexo.—(*a*) If there be no executor appointed by a will ; or (*b*) if all those appointed have died during the life-time of the testator or before probate of the will ; or (*c*) if all those appointed and still living have renounced, or have failed to appear upon being duly cited by the usual process of the Court ; or (*d*) if the Court have passed over all those appointed on account of their residing abroad ; the Court may grant Letters of Administration to some person or persons, other than the executors, and allow them to prove the will. Such administration is called *Administration cum testamento annexo.*

In selecting the administrator *cum testamento* the Court used to be guided by the following general rules :—

(*a*) The person with the greatest interest under the will is best entitled to adminster the estate ; and

(*b*) a single administrator is to be preferred to a joint administration.

The following is the approximate order in which different classes of persons were entitled to a grant of administration *cum testamento annexo* :—

1. The universal or residuary legatee in trust, or any one of them if there be several.

2. If the universal or residuary legatee in trust have an express power conferred upon him by the will to nominate a trustee in his stead : the person so nominated by him is entitled to apply in his stead ; he must produce the nomination on making his application. If the Court have appointed new trustees in place of a surviving residuary legatee in trust administration will be granted to them.

3. The beneficial, universal, or residuary legatee, or if there be several, any one of them who first applies for the grant.

If there be residuary legatees of different kinds the following rules are followed :—

(*a*) A residuary legatee for life is entitled to the grant as a residuary legatee before one who succeeds after the death of a residuary legatee for life ; but such a successor is next entitled, whether he be appointed by the will itself or otherwise, as, for example, by a residuary legatee for life.

(*b*) If the residuary legatees be "such of the testator's children as shall attain the age of twenty-one years," with a right meanwhile to have the interest and profits applied to their maintenance the Court will prefer their guardian to a residuary legatee, who takes only in the event of none of the children attaining the age of twenty-one.

(*c*) If there be more than one residuary legatee, and the share of one of them has lapsed by his death before the death of the testator, the next-of-kin (i.e. the person who would have been entitled to a grant on intestacy) is entitled to a grant as though he were one of the residuary legatees.

4. The personal representative of a residuary legatee who is dead but whose share has not lapsed ; if more than one residuary legatee be dead their representatives are equally entitled, so that the one who first applies will obtain the grant.

5. The widow or next-of-kin, as on an intestacy, but not their representatives, at the discretion of the Court ; and in the case of a married woman her husband.

6. The assignee in the bankruptcy or insolvency or otherwise of a residuary legatee, or a creditor with the consent of the residuary legatees, or a specific or general legatee.

7. If the residue be undisposed of by the will, or have lapsed, the grant goes to the next-of-kin or persons entitled on an intestacy, and, if there be real estate undisposed of, to the heir-at-law equally with them. If they renounce, it may go to a legatee or creditor.

These old rules are considerably affected by the new Acts.

Heirs-at-law are abolished and if any beneficiary is an infant, or a life interest arises under a will or intestacy administration can only be granted to a trust corporation either with or without an individual or to not less than two individuals.

The appointment of a trust corporation involves its payment out of the estate, so that to avoid this it will be well when practicable for two or more individuals to apply for joint administration where there is infancy or a life interest involved. The present legal equality of males and females may affect the old rule by which a male was usually preferred to a female; while the above makes the grant to either husband or wife impossible for an estate of substantial value.

Under a statute of Henry VIII, it was left to the discretion of the Court to grant administration to the widow, or to the next-of-kin, or to both, and the widow was preferred to the children or next-of-kin, and in order to induce the Court to pass her over, the latter had to prove that she was unfit to administer. This

however belongs to the domain of litigation, with which this book is not concerned.

Where it is a question between two or more persons of equal standing the Court was formerly guided in its selection by the following rules :—

(*a*) Males preferred to females.

(*b*) Whole blood preferred to half-blood.

(*c*) *Ceteris paribus*, elder preferred to younger.

(*d*) *Ceteris paribus*, a business man preferred.

As a general rule administration is granted to the nominee of the majority of the next-of-kin.

A person who is an outlaw, or bankrupt, or otherwise disqualified, will not be appointed administrator ; but being an alien is no disqualification.

The following are provisions of the Administration of Estates Act, 1925 :—

CHOICE OF ADMINISTRATOR

Section 9.—Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Probate Judge in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary.

Section 10.—In granting letters of administration the Court shall have regard to the rights of all persons interested in the real and personal estate of the deceased person, or the proceeds of sale thereof, and in particular administration, with the will annexed, may be granted to a devisee or legatee ; and in regard to land settled previously to the death of the deceased, and not by his will, administration may be granted to

the trustees of the settlement; and any such administration may be limited in any way the Court thinks fit:

Provided that, where the deceased died wholly intestate as to his real and personal estate, administration shall:—

(*a*) Unless by reason of the insolvency of the estate or other special circumstances the Court thinks it expedient to grant administration to some other person, be granted to some one or more of the persons interested under this Act in the residuary estate of the deceased, if an application is made for the purpose;

(*b*) in regard to land settled previously to the death of the deceased, be granted to the trustees, if any, of the settlement, if willing to act.

EXECUTOR *DE SON TORT*

Before leaving the subject of personal representatives it is well to call attention to the position of one who, though not a personal representative, has made himself liable as such by intermeddling with the affairs of the deceased. Almost any intermeddling with the assets makes a person liable as an executor *de son tort*, but merely ordering the funeral is not of itself sufficient to charge him as such.

An executor *de son tort* is liable to an action by the rightful executor or administrator, and also by a creditor or legatee, for he is liable as an executor would be, though he has not the privileges of an executor. He cannot do for his own benefit acts which are lawful for an executor, as retaining a debt due to him from the

deceased, but he can rely on acts done by him as executor and not for his own benefit, as paying a debt owing by the deceased to any person other than himself; and is only liable to account for the balance of the property received by him, after making allowance for all payments properly made thereout.

If an action is brought against him by a creditor or legatee he must not hand over the assets in his hands to the rightful executor or administrator, since this will not be considered a good defence; though he may apply such assets to the payment of any debt superior to the one for which he is being sued.

If an executor *de son tort* obtain a grant of administration he is at once entitled to the privileges of an administrator.

An English company which transferred stock standing in the name of a deceased person, who was resident abroad, and whose foreign executors had no intention of taking out probate in England, was held to be liable as an executor *de son tort.*

TRANSFER OF ADMINISTRATION TO PUBLIC TRUSTEE

The duties of personal representatives are often irksome, and the Public Trustee Act, 1906, provides a way out of difficulty for those who think it right to claim relief.

By Section 6 of that Act:

Any executor who has obtained probate or any administrator who has obtained letters of administration, and, notwithstanding he has acted in the administration of the deceased's estate may, with

the sanction of the Court, and after such notice to the persons beneficially interested as the Court may direct, transfer such estate to the Public Trustee for administration either solely or jointly with the continuing executors or administrators, if any. And the order of the Court sanctioning such transfer shall, subject to the provisions of this Act, give to the Public Trustee all the powers of such executor or administrator and such executor or administrator shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date of such order, other than the act or default of himself or of persons other than himself for whose conduct he is in law responsible.

This appears to be limited by Section 5, which provides that :

The Public Trustee shall not be appointed to be trustee of any will or settlement or other instrument creating a trust, where the will, settlement or other instrument creating the trust or duty contains a direction to the contrary, unless the Court otherwise order.

CHAPTER II

PROBATE AND LETTERS OF ADMINISTRATION

When a person has been appointed executor the first thing for him to decide is whether he will act or not; if he decide not to act he should execute a Form of Renunciation. (See p. 151).

If, however, he decide to accept the office his first duty will be to arrange for the funeral of the deceased in a manner suitable to his position and wealth, and after that to obtain probate of his will. This may be obtained at any time after seven days have elapsed from the death of the testator.

Similarly, if no executors be appointed, the person having the right to administer must decide whether to act or not, and in the event of his deciding to act he should without delay take steps to procure administration. Letters of administration, other than with will annexed, are not issued until fourteen days have elapsed from the death.

Application for probate or letters of administration must be made by the executor or person entitled to administer either in person, in which case he must attend in person at the office whence probate is sought, or by a solicitor, in which case there is no need for the executor or administrator to attend at the office personally. Besides avoiding the necessity of personal attendance at the Probate office, a certain amount of trouble will be saved by employing a solicitor, and

the cost of employing a solicitor is allowed out of the estate of the deceased. If the executor or administrator decide to employ a solicitor, the solicitor employed will, of course, give him full instructions as to what he must do to enable probate to be obtained.

If an executor or person entitled to letters of administration should decide to dispense with the services of a solicitor a study of this chapter will enable him to obtain the grant with a minimum of trouble.

Wherever the application be made it must in every case be made personally, and not by letter or by an agent, so that at least one visit to the office will be necessary, and the applicant should, therefore, consider carefully where he had best apply for the grant.

Application may be made in every case at the Principal Probate Registry, Somerset House, Strand, London, where the office hours are 10 to 4, and 10 to 1 on Saturdays.

Besides the Principal Registry there are a number of district registries, a list of which, with their districts, will be found at p. 155. If the deceased had a fixed place of abode within the district of one of these District Probate Registries application may be made at the registry of that district, whatever be the value of the estate.

Where the whole property, without deduction of debts, except debts for unpaid purchase money, or to secure money borrowed to complete the purchase, or funeral expenses does not exceed £500 application may be made at any of the Inland Revenue Offices mentioned at p. 157. (The fee in all cases is 15s.)

Where the whole personal estate of an intestate does not exceed £100, the widow or children, if residing more than three miles from a probate registry, may apply to the Registrar of the County Court of the district within which the deceased lived. (The fees vary from 5s. to 13s.)

The following are the rules and orders of the Principal and the District Registries relating to personal applications. They differ but slightly, and when there is any difference the rule for the Principal Registry is given while the alteration necessary for its application to a District Registry is inserted in italics.

1. Persons wishing to obtain grants of Probate or Letters of Administration without the intervention of a proctor, solicitor, or attorney, must apply in person at the department for personal applications, *or at the District Registry*, and not by letter.

2. No such application will be received through an agent of any kind (whether paid or unpaid).

3. The applications of parties who are attended by a person acting, or appearing to act, as their adviser in the matter will not be entertained.

4. All fees are to be paid in advance in Probate Court Stamps.

5. Applications which have in the first instance been made through a proctor, solicitor, or attorney, at the Principal Registry, or at a District Registry, cannot be transferred to the department for personal applications of the Principal Registry, or treated as personal applications at a District Registry.

6. Applications for grants of Probate or Administration in cases which have already been before the

Court (on motion or otherwise) will not be entertained as personal applications, but must be made through a proctor, solicitor, or attorney.

7. Whenever it becomes necessary in the course of proceeding with a personal application to obtain the directions of the Court, the application will not be proceeded with, but must be placed in the hands of a proctor, solicitor, or attorney.

8. The papers necessary to lead the grant applied for will be prepared in this department, *or in the District Registry*. An applicant is, however, at liberty to bring such papers, or any of them, filled up, but not sworn to, and the same, if correct, may be received (the usual fee for perusal being charged). All further papers which may be required will be drawn in this department, *or in the District Registry*. Testamentary papers once deposited in this department, *or in the District Registry*, will not be given out unless under special circumstances, and by permission of a Registrar of the Principal Registry.

9. When it is necessary to administer an oath, or take an affirmation, the party shall be sworn or affirmed before some proper authority of the Principal Registry, or of a District Registry, unless otherwise permitted by one of the Registrars *or by the District Registrar*.

10. Every applicant for a first grant of probate or Letters of Administration must produce a certificate of the death or burial of the deceased, or give a satisfactory reason for the non-production thereof.

11. Each applicant at the Principal Registry must be prepared with a reference to some person of position or character to establish his or her identity.

11. (District). *The District Registrar may require in any case he sees fit a reference to some person of position or character to establish the identity of the applicants.*

12. The engrossments of wills or testamentary papers will be made in the Registry from which the grant is to issue.

13. Every applicant for a grant of Probate or Letters of Administration shall give under his or her hand a schedule of the property to be affected by the grant in the prescribed form. (This form is marked 44, and headed " An account of the estate of the deceased," it may be obtained at the Registry, or at any Inland Revenue Office, or at any money order office outside the Metropolitan district.)

14. Legal advice is not to be given to applicants either with respect to the property to be included in the above-mentioned schedule, or upon any other matter connected with the application, and the clerks in the department, *or the District Registrar*, are only to be held responsible for embodying in a proper form the instructions given to them, but they will, as far as practicable, assist applicants by giving them information and directions as to the course which they must pursue.

15. A receipt or acknowledgment of each application will be handed to the applicant, and the production of such receipt will be required of the person who attends to obtain the grant when completed.

16. No clerk or officer of this department, *or of the District Registry*, is to become surety to any administration bond.

17. All administration bonds in cases of personal

applications are to be executed in this department, or in a District Registry; if executed in this department the bond must be attested by the chief clerk or senior clerk in attendance.

17. (District). *All administration bonds in cases of personal applications are to be executed in the District Registry making the grant, or in some other Registry belonging to the Court of Probate, unless otherwise permitted by the District Registrar.*

TIME OF ISSUE OF GRANT

No Probate or Letters of Administration with the will annexed shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge, or by order of two of the Registrars, *or, in the case of a District Registry, by order of one of the Principal Registrars.*

No Letters of Administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under like conditions.

PENALTY ON DELAY IN APPLICATION

Any person who has taken possession of, or in any manner administered any part of the personal estate of a deceased person, is bound to apply for Probate or Letters of Administration within six months of the death, or should there be any suit or dispute respecting the will or the right to Letters of Administration, which is not terminated within four months after the death, then within two months after the termination of the suit or dispute, in case of default he is liable to a penalty of double the duty chargeable.

In every case where Probate or Administration is for the first time applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the Registrars. Should the certificate be unsatisfactory the Registrars are to require such proof of the alleged cause of delay as they may see fit.

In the case of an application being made under the above circumstances in a District Registry the Registrar is to require an affidavit, or communicate with the Registrars of the Principal Registry.

PREPARATION FOR APPLICATION

According to the paper of instructions issued by the department applicants should take with them to the Registry :—

(1) The will (if any).

(2) A Registrar's certificate of the death, or an official certificate of the burial.

(3) An account of the whole property, with duplicate lists of stocks and shares, leasehold property and real estate. (Form 44, see p. 152.)

(4) A list in duplicate of the debts and funeral expenses of the deceased, where such deduction can be made. If the gross value of the estate, less unpaid purchase money or money borrowed to complete a purchase, be under £500, no deduction for debts or funeral expenses is allowed, so that this list is not required.

THE WILL

Execution.—If the will be duly signed at the foot, and contain a proper witnessing clause stating that it

was signed by the testator, and declared as his will before two witnesses who were both present at the time, and at his request signed their names as witnesses; there is no need for either of the witnesses to take part in the business of probate.

If there be no attestation clause to a will or codicil presented for Probate, or if the attestation clause thereto be insufficient, the Registrars must by the Probate rules require an affidavit from at least one of the subscribing witnesses, if they, or either of them, be living, to prove that the provisions of the Wills Act, in reference to execution, were in fact complied with. If a codicil executed subsequently and containing a proper attestation clause refer to the will by date, or be written on the same piece of paper, or otherwise clearly identify the will, no affidavit as to the due execution of the will is required.

If both the subscribing witnesses be dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will or codicil, but if no affidavit of any such other person can be obtained evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

If the will be not signed in the usual way, but the testator himself wrote the attestation clause in which his name occurs and treated that as his signature, the will is duly executed, but an affidavit by one of the attesting witnesses is required to prove that the

signature in the attestation clause was intended by the testator for his signature to the will. If both witnesses be dead, or cannot be got at, evidence of this and also of the handwriting of the testator and of the witnesses must be given.

As to swearing and affirming the necessary affidavits in any of these cases see p. 32.

ALTERATIONS IN WILL

Alterations. If there be any obliteration, alteration, or interlineation, not attested by at least the initials of the testator and witnesses, an affidavit will be required to show whether they were made before or after the execution of the will.

If one of the witnesses can speak positively as to this an affidavit by him will suffice, but if none of the witnesses are positive they should all join the affidavit. If none of them can state positively either one way or the other the executor should join in the affidavit, and state that he cannot produce any further or other evidence (if such be the fact); Probate will then be granted of the will as it originally stood.

The necessary papers will be prepared in the office, though the applicant may, if he prefer it, take them with him unsworn to. If the attestation and execution be not perfect the applicant should take one of the subscribing witnesses with him to the Registry, so that any affidavit that may be needed may be sworn without delay.

ACCOUNT OF PROPERTY

Before applying for a grant one of the chief duties of the applicant is to prepare a full account of the

estate of the deceased; this should be made out on the Form (numbered 44) provided for the purpose. It may assist him in filling up this form if he also procures a form of the affidavit, which he will have to swear before he can obtain Probate or Administration. If the applicant fills up the form of affidavit and takes it with him he will save a few shillings, and probably a certain amount of time. The forms of affidavit contain full and clear descriptions of how they are to be filled in, and nothing need be said here about this.

The principal forms of affidavit in use are as follows:

B2. To be used where the estate does not exceed £500 in gross value.

A4. To be used where the estate consists exclusively of personal property in the United Kingdom.

A7. To be used in other cases.

All these forms and also a paper of instructions for personal applications may be obtained free of charge at any postal money order office outside the Metropolitan Postal District, or from any Collector of Inland Revenue, or from the Controller of Legacy and Succession Duties, Somerset House, Strand, W.C.

If the estate comprises stocks and shares the executor should obtain a list of market prices for the day on which the deceased died.

Lists of stocks and shares quoted on the Stock Exchange are published at 4 Copthall Buildings, E.C. Lists are published by several provincial stock exchanges of stocks and shares only dealt in and quoted locally. Copies of provincial lists should be annexed to the account.

In the case of an unquoted stock or share a letter should be annexed to the account from the Secretary stating the value.

ADMINISTRATION BOND

Except in the case of an executor, and where, under Section 11 bonds are dispensed with, every applicant is required to enter into a bond, with two sureties, for the faithful administration of the estate, unless the applicant is the husband of the deceased, or the personal estate does not exceed £50, when one surety is sufficient.

According to the paper of instructions for personal applications at the Principal Registry (see p. 152).

"Except under special circumstances a second attendance is necessary."

"Sureties should attend on the second occasion."

"Under special circumstances sureties may be allowed to attend separately."

It seems, however, from Rule 17 (quoted above) as to personal applications that this is not strictly accurate, but that the sureties may attend at a District Probate Registry to execute the bond. If it will be more convenient for either of the sureties to do so the attention of the clerk should be called to this in order that no difficulty may arise.

The applicant should make all the necessary arrangements as to sureties before applying.

The amount for which the bond is given is usually double the gross value of the estate, but when the debts are trifling and the administrator is the only person entitled to the estate the amount of the bond may be

reduced to double the amount of the debts. Where the estate does not exceed £50 only one surety is required, and if the administrator be the husband or his representative (including his attorney) only one surety is required, whatever be the value of the estate, and whatever be the form of the grant.

The sureties must be responsible persons and over twenty-one years of age. Married women are not accepted as sureties except under special circumstances.

There is a stamp duty of 5s. on the bond if the gross estate exceeds £100.

Section 11.—Probate rules may be made for dispensing with sureties to administration bonds when the grant is made to a trust corporation or to two or more individuals, or in any other proper case.

CHAPTER III

ESTATE DUTY

PROPERTY left by a deceased person, and property which passes from one person to another by reason of a death is subject to several kinds of tax, which may be classed altogether under the general title of Death Duties.

The principal death duty is called Estate Duty, and was imposed by the Finance Act, 1894, in place of some of the then existing duties. This Act provides that in the case of every person dying on or after the 1st August, 1894, there shall (with certain exceptions which will be pointed out later) be levied and paid upon the principal value of all property real or personal, settled or not settled, which passes on the death of such person a duty called estate duty.

The rate of this duty has been increased by succeeding Acts, and now ranges from 1 per cent. on an estate between £100 and £500, up to 40 per cent. on an estate over £2,000,000.

The different scales applicable for deaths after various dates are given at p. 173.

MARGINAL ESTATES

It will be noticed that the rate of duty changes abruptly as the various limits are reached, and this might result in an estate slightly above a rate limit retaining a smaller balance than one slightly below.

In order to obviate this result the duty is charged at the lower rate up to the limiting value, and at 100 per cent. on the excess, thus leaving the balance after payment of duty stationary until it is more profitable to pay duty at the higher rate. In the case of an estate just over £2,000,000 this 100 per cent. duty is imposed until the sum of £2,166,666 13s. 4d. is reached, capital to the extent of £166,666 being thus made worthless to the beneficiaries.

The ranges of marginal estates are given at page 173.

AGGREGATION

As a rule all the property passing on the death, whether it pass under the will or intestacy or under some existing settlement, must be aggregated in order to ascertain the rate of duty.

Property passing on the death in which the deceased never had any interest is excluded from aggregation and is to be treated as an estate by itself, subject to its proper rate of duty. Where the net value of the property passing under the will or intestacy (including property over which the deceased had and exercised by will a general power of appointment, and property which by default of exercise of the power of appointment belonged to the deceased absolutely, but exclusive of property settled otherwise than by the will of the deceased) does not exceed £1,000, such property is not to be aggregated with other property, but is to form an estate by itself, and it is free from legacy and excessive duty.

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Settled property where the disposer died on or before 1st August, 1894, which would on his death after that

date have been liable to estate duty, is not to be aggregated but is to be treated as an estate by itself. If the deceased had and exercised over such property an absolute power of appointment this privilege would apparently be lost.

COLONIAL PROPERTY

Where duty is payable in a British possession by reason of a death in respect of any property situate in such possession and passing on such death ; the amount of such duty may be deducted from the estate duty payable in respect of that property on the same death. This provision, however, applies only where there is no duty leviable in such possession on property situate in the United Kingdom when passing on death, or where there is a reciprocal rule as to deduction of estate duty from such duty.

This applies only to personal property. Land outside the United Kingdom is not subject to any United Kingdom tax.

PRINCIPAL VALUE HOW DETERMINED

The principal value of any property passing on death includes income accrued from such property down to and outstanding at the time of the death.

Thus, if stock is on that day quoted, *ex-div.* the amount of the dividend if not already paid must be added to the quoted price. Rents, interest on loans and deposits, annuities, dividends (except where market price is taken as the value) and periodical payments in the nature of income are considered as

accruing from day to day, and should be apportioned, the apportioned amount being added to the principal.

In determining the value of an estate for the purpose of estate duty, allowance may be made for reasonable funeral expenses, and for debts and incumbrances; but an allowance may not be made :—

(*a*) For debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate.

Any debt or incumbrance for which an allowance is made may be deducted from the value of the land or other subjects of property liable thereto.

An allowance may not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which estate duty is paid. There will be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the

Commissioners, that the personal property of the deceased situate in the foreign country or British Possession in which the person to whom such debts are due resides, is insufficient for their repayment.

An allowance not exceeding 5 per cent. may be made from the value of property abroad for the cost of administration. And when any foreign death duty is payable on property abroad, allowance of the amount of such duty may be made from the value of the property.

It is provided that the principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased.

The Commissioners are to fix this price according to the market price at the time of the death of the deceased and cannot make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time. Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased they must take such depreciation into account in fixing the price.

TIMBER

Where an estate comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, etc., is not to be taken into account in estimating the principal value of the estate or the rate of duty. If any net moneys, after deducting all necessary outgoings since the death, are received from

the sale of such timber, etc., which may be cut or felled, before passing again on death, duty at the rate due to the principal value of the estate is payable on such net moneys from time to time. And if such timber, etc., be sold either with or apart from the land on which they are growing, estate duty is payable on the principal value thereof as at the death of the deceased, after deducting any estate duty already paid upon the proceeds of sale of any timber felled and sold since that date.

EXPECTANCY

Where an estate includes an interest in expectancy, estate duty in respect of this interest may be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty be not paid with the estate duty in respect of the rest of the estate, then :—

(*a*) For the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest will be its value at the date of the death of the deceased ; and

(*b*) the rate of estate duty in respect of the interest when it falls into possession will be calculated according to its value when it falls into possession together with the value of the rest of the estate as previously ascertained.

Where an interest in expectancy has been *bona fide* sold or mortgaged the duty payable by the purchaser or mortgagee when it falls in is based on what it would have been at the date of the sale or mortgage, and in

the case of a mortgage any higher duty payable by the mortgager ranks after the mortgage.

The Commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at 4 per cent. ; and on the receipt of such sum they shall give a certificate accordingly.

WHAT IS LIABLE TO ESTATE DUTY

Property passing on the death, and therefore liable to estate duty includes property falling within the following classes :—

A.

" Property of which the deceased was at his death competent to dispose " ; that is property in which he has such an estate or interest, or over which he has such general power as would, if he were *sui juris* (i.e., of full age and sane), enable him to dispose of the property. This includes an estate tail whether in possession or not, and probably a share in property of which he is a joint tenant.

A " general power " is any power or authority by which he can dispose of the property as he thinks fit, whether exerciseable by instrument *inter vivos*, or by will, or by both, but the term does not include a power

exerciseable in a fiduciary capacity under a disposition not made by himself, nor does it include any power exerciseable by a tenant for life under the Settled Land Act, 1925, or by a mortgagee as such. Money which a person has a general power to charge on property is property of which he has general power to dispose.

Where the deceased person was at the time of his death domiciled within the United Kingdom, all moveable property situate abroad (including debts secured by mortgage of real property abroad, and real property forming part of the assets of a partnership) of which the deceased was competent to dispose is liable to estate duty.

Property within the United Kingdom belonging to a person domiciled elsewhere is liable.

EXEMPTIONS

Real property (freehold or leasehold) situate abroad is not, unless forming part of the assets of a partnership, liable to estate duty.

Property of any common seaman (not including a warrant officer) marine, or soldier (including a corporal, but not a sergeant, or airman) slain or dying in the service of His Majesty, is exempt from estate duty. If, however, the representative of any such person applies for a grant of Probate or Administration, and the estate is under £500, the fixed duties payable in respect of small estates are chargeable, and must be paid.

The death need not apparently be due to the service, as in the following special cases.

In the case of any seaman, soldier, or airman of any rank dying from wounds inflicted, accident accruing, or disease contracted within three years before death while on active service against the enemy whether on sea or land, in the late war or in the course of operations arising directly thereout after its termination, or of the master or a member of the crew of a ship or fishing boat dying from causes arising out of the operations of the war, the Treasury may, to the extent to which the property passes upon the death to his widow, lineal descendants, or ancestors, brothers, or sisters, or their descendants, remit or repay estate duty in full upon £5,000 and make allowance for acceleration of death on the rest of the estate (see table on p. 172).

The benefits of the relief on the first £5,000 are to be apportioned rateably among those who would otherwise bear the duty according to the amounts they would so bear, and without regard to their respective rights of priority.

Where estate duty has become payable in respect of any property passing on the death of any person dying from wounds, etc., as above, and the property passes again in like manner, the whole of the estate duty payable on the second death is to be remitted or repaid, and the property is not to be aggregated with any other property passing on the subsequent death, irrespective of the devolution on the subsequent death.

Any application for such remission must be made to the War Office or the Admiralty, or as the case requires.

Where land or a business (not being a business carried on by a company) or an interest in same,

passes on a second death within five years, the duty on such second death is reduced :—

If in	1st	year by	50 per cent.
,,	2nd	,,	40 ,,
,,	3rd	,,	30 ,,
,,	4th	,,	20 ,,
,,	5th	,,	10 ,,

If the value passing on the second death exceeds the value on the first the duty is reduced only on the latter value, that on the increment in value being payable at the full rate.

This relief and that in the case of persons dying from wounds, etc., is alternative.

Estate duty is not payable on any advowson.

Property vested in the deceased as trustee for some other person under a disposition made by some person other than the deceased, and property vested in the deceased as trustee under a disposition made by himself more than three years before his death, and under which possession and enjoyment of the property was *bona fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise, are not deemed to pass on the death, and need not in any case be included in the account of the property of the deceased.

Before transferring or otherwise dealing with stocks or shares vested in deceased as sole trustee, his personal representatives may be called upon to make an affidavit that such stocks or shares were trust property.

The Treasury may remit the estate duty leviable in respect of pictures, prints, books, manuscripts, works

of art, or scientific collections which appear to the Treasury to be of national, scientific, or historic interest, and which are given or bequeathed for national purposes, or to any university, county council, or municipal corporation. If the duty be remitted the property is not to be taken into account in fixing the rate of duty.

If pictures, prints, books, manuscripts, works of art, scientific collections, or other things of a like nature not yielding income, passing on the death of a deceased person, appear to the Treasury to be of national scientific, historic, or artistic interest, such property is not to be aggregated with other property, forms an estate by itself, and is exempt from all duties until sold. Application for exemption of such property should be sent to the Secretary to the Treasury, Whitehall, S.W.1., with a schedule setting forth the particulars, and values of the articles. If any of the articles have been sold the date of sale and gross amount realised should be stated.

B.

Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest, but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office or recipient of the benefits of a charity, or as a corporation sole (e.g., bishop, dean, archdeacon, canon, parson).

The value of the benefit accruing or arising from the cesser of an interest on the death of the deceased shall :—

(*a*) If the interest extended to the whole income of the property be the principal value of that property; and

(*b*) If the interest extended to less than the whole income of the property be the principal value of an addition to the property equal to the income to which the interest extended.

Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before 1st August, 1894, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty shall not be payable in respect of that property until the death of the survivor.

EXEMPTIONS

Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion to himself; the property is not deemed to pass to the settlor on the death of such other persons merely because the settlor, in possession as tenant for life, becomes entitled to the immediate reversion on his own death, or acquires an absolute power to dispose of the property.

Where a settlor confers on some person other than himself an interest for the life of such person or determinable on his death in property of which such person has not at any previous time been competent to dispose, and no interest is created by the settlement other than this or other similar interest, and the

only benefit which the settlor retains is subject thereto, and such person enters into possession of the interest to the entire exclusion of the settlor, then the property shall not be deemed to pass on death, by reason only of its reverting to the settlor in his lifetime. Where on the death of a husband his wife becomes entitled, in virtue of her former interest, to property of which he was by law entitled to receive the rents and profits, such property shall not be deemed to pass on his death. In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

If estate duty has been paid on any settled property on the death of a wife or husband, and the same property passes again on the death of the surviving partner of the marriage, estate duty is not payable on the second death.

Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives where such purchase was made, or such lease or annuity granted for full consideration on money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

Where any such purchase was made, or lease or annuity granted for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

C.

Any property taken under a disposition purporting to operate as an immediate gift *inter vivos* made by the deceased which shall not have been *bona fide* made three years before his death ; and any property taken under any gift, whenever made, of which *bona fide* possession and enjoyment shall not have been assumed by the donee, and thenceforth retained to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise at least three years before the death.

This rule does not apply to gifts made in consideration of marriage or which are part of the normal expenditure of the deceased, or are reasonable having regard to his income, or to the circumstances of the case, or which in the case of any donee does not exceed in the aggregate £100 in value or amount.

Any property which the deceased has caused to be transferred to or vested in himself and any other person jointly, so that a beneficial interest therein passes or accrues by survivorship on his death to such other person.

Any property passing under any settlement made by the deceased otherwise than by will, whereby he

has reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property.

D.

Any annuity or interest purchased or provided by the deceased, either by himself alone, or in concert, or by arrangement with any person to the extent of the beneficial interest accruing or arising by survivorship or otherwise on his death. There is an exemption, however, in favour of a single annuity not exceeding twenty-five pounds, purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person. If in any case there be more than one such annuity, the annuity first granted is the one entitled to exemption from estate duty.

Pensions or annuities payable by the Government of India to the widow or child of any deceased officer are in all cases exempt, even when paid out of a fund to which in his lifetime the deceased contributed.

CHAPTER IV

PAYMENT OF ESTATE DUTY

The personal representative on applying for Probate or Administration must, as far as he is able, specify in the accounts annexed to the Inland Revenue affidavit, which he is obliged to swear, all the property in respect of which estate duty is payable upon the death of the deceased.

The personal representative is accountable for the duty on all the personal property, wheresoever situate, of which the deceased was competent to dispose at his death, but is not liable for any duty in excess of the assets which he has received, or which, but for his own neglect or default, he might have received. Such estate duty is payable out of the general residuary estate.

Where the representative is not accountable for the duty in respect of any property the liability rests on any person to whom the property passes for any beneficial interest in possession, and also to the extent of the property actually received or disposed of by him, on every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested.

When the personal representative does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists, but that he does not know the

amount and value thereof, and that he undertakes as soon as the amount and value are ascertained to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavits.

The estate duty in respect of all personal property of which the deceased was competent to dispose, must be paid by the personal representative on delivering the Inland Revenue affidavit, so that the whole of this duty must be paid by the representative before he has obtained Probate or Administration.

This is rather a hardship, as the Probate or Letters of Administration are his authority for disposing of the estate of the deceased, and in many cases he will have to borrow the money required for paying the duty.

The personal representative may pay in like manner the estate duty in respect of any other property passing on the death which by virtue of any testamentary disposition of the deceased is under his control, or in the case of property not under his control, if the persons accountable for the duty request him to make such payment.

LAW OF PROPERTY ACT, 1925

Liability for Estate Duties

Section 16.—(1) A personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in

respect of land (including settled land) which devolves upon him by virtue of this Act or otherwise.

(2) In every other case the estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has attached and free from such charge) shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land or any interest therein capable of being overreached by his conveyance being a conveyance to a purchaser made under the Settled Land Act, 1925, or pursuant to a trust for sale.

(3) For the purpose of raising the duty, and the costs of raising the same, the personal representative or other person accountable as aforesaid shall have all the powers which are by any statute conferred for raising the duty.

(5) Notwithstanding that any duties are by this Act made payable by the personal representative or other person aforesaid, nothing in this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty, and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said Commissioners or to the personal representative or other person accountable as aforesaid, as the case may require.

(6) Nothing in this part of the Act shall impose on a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position, as such, any liability for payment of duty, in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being

be available in his hands or in the hands of such trustees for the payment of the duty or which would have been so available but for his or their own neglect or default, or impose a charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage.

(7) The said Commissioners, on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duty for which he is accountable in respect of the land or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any further claim for such duty the land to which the certificate extends, and the production of such certificate to the land registrar or other proper officer shall be a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends.

The personal representative will probably, as a rule, not be eager to pay more estate duty than necessary, and these rules are consequently not of great importance.

If a personal representative pays the duty in respect of real estate the trustees or owners may, unless they have agreed otherwise, repay him by instalments with interest, as though they were paying the duty direct to the Revenue Authorities.

It is provided that estate duty, so far as not paid by the personal representative, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty,

or within such further time as the Commissioners may allow.

ESTATE DUTY ON ANNUITIES

The estate duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, coming under Class D (see p. 162), may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty will be added to each instalment, and paid accordingly; but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

ESTATE DUTY ON REAL PROPERTY

The duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of 4 per cent. per annum, from the date at which the first instalment is due, and the first instalment is due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty must be added to each instalment and paid accordingly. But the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, must be paid on completion of the sale, and if not so paid will be duty in arrear.

Simple interest at the rate of 4 per cent.* per annum

*Prior to 31st July, 1919, the rate was 3 per cent.

without deduction for Income Tax is charged upon all estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and is recoverable in the same manner as if it were part of the duty.

The Commissioners of Inland Revenue may remit the interest on any death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

GENERAL

The following are various provisions of the Finance Act, 1894, with respect to estate duty:—

Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable time as the Commissioners consider necessary. [Sec. 7 (8)].

Where the Commissioners require a valuation to be made by a person named by them the reasonable costs of such valuation shall be defrayed by the Commissioners. [Sec. 7 (9).]

Property passing on any death shall not be aggregated more than once, nor shall estate duty in respect

thereof be more than once levied on the same death. [Sec. 7 (19).]

Every person accountable for estate duty and every person whom the commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased. [Sec. 8 (5).]

A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay £100, or a sum equal to double the amount of the estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners or in any proceeding for the recovery of such penalty the Court shall have power to reduce any such penalty. [Sec. 8 (6).]

Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear. [Sec. 8 (7).]

The Commissioners on application from a person accountable for the duty on any property forming part

of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate. [Sec. 8 (8).]

Where the Commissioners are satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding 4 per cent. or any higher interest yielded by the property, and on such terms as the Commissioners think fit. [Sec. 8 (9).]

If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon. [Sec. 8 (1).]

Where it is proved to the satisfaction of the Commissioners that too much estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at 3 per cent. per annum. [Sec. 8 (12).]

A rateable part of the estate duty on an estate in proportion to the value of any property which does not pass to the executor as such shall be a just charge on the property in respect of which duty is leviable, provided that the property shall not be so chargeable as against a *bona fide* purchaser thereof, for valuable consideration without notice. [Sec. 9 (1).]

On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of estate duty, the Commissioners shall grant a certificate of the estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property. [Sec. 9 (2).]

Subject to any repayment of estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate. [Sec. 9 (3).]

If the rateable part of the estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned. [Sec. 9 (4).]

A person authorised or required to pay the estate duty in respect of any property, shall, for the purpose of paying the duty or raising the amount of the duty

when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof. [Sec. 9 (5).]

A person having a limited interest in any property who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him. [Sec. 9 (6).]

Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1925, may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts. [Sec. 9 (7).]

RELEASE OF PERSONS PAYING ESTATE DUTY

The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof as the case may be. [Sec. 11 (1).]

Where a person accountable for the estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full

statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for estate duty, and the Commissioners shall give a certificate of such discharge. [Sec. 11 (2).]

A certificate of the Commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof was added to the value of the property in respect of which duty has been already accounted for. [Sec. 11 (3).]

Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure. [Sec. 11 (4).]

PAYMENT IN LAND

The Commissioners may, if they think fit, accept in payment of estate duty in respect of any real (including leasehold) property such part of the property as may be agreed between them and the person liable to pay such duty.

CHAPTER V

SETTLEMENT ESTATE DUTY

The Finance Act, 1894, provides that where property in respect of which estate duty is leviable is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property :—

(*a*) A further estate duty (called Settlement Estate Duty) on the principal value of the settled property shall be levied at the rate of 1 per cent., except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased ; but

(*b*) During the continuance of the settlement the settlement estate duty shall not be payable more than once.

The idea of the settlement estate duty was to compound for any further estate duty that might become payable during the continuance of the settlement, neither duty being again payable until the death of some person competent to dispose of the property.

The rate of duty was increased to 2 per cent. in 1909, and in 1914 the duty was abolished altogether during the continuance of the settlement, in the case of any person other than the wife or husband of the first deceased dying after 15th August, 1914.

Provision was made for cases in which estate duty became payable on the death of any person who had

not at any time been competent to dispose of the property by giving a set-off, and in case of excess repayment of the settlement estate duty paid on such person's interest against the estate duty payable on their death with interest at 3 per cent.

As allowances for settlement estate duty are likely to be common for many years to come this chapter has been left standing although it now affects trustees rather than executors.

In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

Any person paying the settlement estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the *ad valorem* stamp duty (if any) charged on the settlement in respect of that property.

Where any lands or chattels are so settled, whether by Act of Parliament or Royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provision of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels, shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of estate duty, in like manner as for the purpose of succession duty.

The settlement estate duty is not payable in respect of property settled by a disposition which took effect before 1st August, 1894.

The settlement estate duty leviable in respect of a legacy or other personal property settled by the will of the deceased is (unless the will contains an express provision to the contrary) payable out of the settled legacy or property in exoneration of the rest of the deceased's estate, and is payable upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the Executor within six months after the death or within such further time as the Commissioners may allow.

Settlement estate duty like estate duty may be paid in kind.

CHAPTER VI

POWERS AND DUTIES OF PERSONAL REPRESENTATIVES

After the grant of administration the powers of an administrator and of an executor are equal, and, regarding the law of distribution on an intestacy as equivalent to a will, their duties and liabilities are also the same, so that it will be convenient to speak of both as executors, and to treat an intestacy as administration under a will made by law instead of by the deceased, and to refer to the deceased in all cases as the testator.

Upon the grant of administration the whole of the testator's property, real and personal, vests in his executors.

Property in which the testator had only a joint interest with some other person does not pass to his executors, but to the other joint owners by survivorship. Property over which the testator by his will has exercised a general power of appointment, including entailed property specifically dealt with in the will, passes to his executors.

All rights of action which the testator had pass to his executor, except such as cease with the testator's death.

The power of executors over the property of the testator is as great as that of the testator himself,

except that they cannot dispose of it by will, and cannot give over it an option of purchase to be exercised at a future time. Thus they can sell, let, or mortgage any of the property ; they can bring actions to recover what was due to the testator, can release or compound debts due to the testator, can defend or settle actions brought, or settle claims made against them as executors, and can generally deal with the estate as absolute owners ; it must be remembered, however, that they are only trustees of the property, and if they deal improperly with it they are liable for a devastavit, so that it is very important for them to know what they ought, and what they ought not to do.

LIABILITY OF EXECUTOR

As a general rule an executor is responsible only for assets which come into his own hands, and not for those that come to the hands of his co-executors, but this was not the case where he had done anything to assist his co-executor in obtaining possession ; in such cases he was responsible for their misapplication.

Under the Trustee Act, 1925, Section 30, a trustee is chargeable only for moneys and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee nor for any banker, broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities nor for any other loss unless the same happens through his own wilful default. As a personal representative is

a trustee it would appear that the above rule is no longer applicable.

This liability however did not arise where the act of the executor was in the ordinary course of business, as where he paid money into a bank to the account of the executors and his co-executor misapplied it, or where he employed his co-executor being a stockbroker to register bonds, and he misappropriated them, or where he joined in a conveyance of real property, and his co-executor received the purchase money ; in the latter case, however, the executor was not excused unless he took due means to find out from his co-executor that such sale was necessary for the due administration of the estate.

WHEN SINGLE EXECUTOR CAN ACT

The executors or administrators of a deceased person are regarded in law for most purposes as a single person ; except in the case of real estate any one can act independently of the others, and his act is binding upon the estate, though he alone is personally liable for its consequences. In dealing with real property (not including leaseholds) this is not the case ; in order to bind the estate all the executors or administrators must concur.

Section 21.—Every person to whom administration of the real and personal estate of a deceased person is granted, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

FUNERAL OF DECEASED

The first duty of an executor or administrator is to bury the deceased in manner suitable to his position in life and to the estate he leaves behind him.

Funeral expenses according to the degree and quality of the deceased are to be allowed out of the goods of the deceased before any debt or duty whatsoever. The executor should however be careful not to spend more than is reasonable and proper under the circumstances of the case, since should he do so he may be held personally liable for the excess.

INVENTORY

An executor may be called upon by any person interested in the personal estate to exhibit a true and perfect inventory of all the goods, chattels, wares, and merchandises, as well moveable as not moveable, and should be prepared to do so in case of necessity arising. He should provide a book in which a list of everything can be made out, with the estimated value of each article placed against it. This will enable him to prepare the affidavit necessary for obtaining Probate, and, if at any time called on by the Court so to do, to exhibit an inventory of the estate. This list should be prepared before applying for Probate or Administration, and is necessary for enabling a true affidavit to be made for obtaining a grant.

GETTING IN THE ESTATE

It is the duty of the executor to collect the property of his testator and provide for its safety. He must use due diligence in getting in outstanding debts, and in suitable cases it is his duty to take legal proceedings

to enforce claims which cannot be otherwise enforced. If he delays too long and so enables a creditor to avail himself of the Statute of Limitations, the executor will be personally liable.

PAYMENT OF EXPENSES

The next duty of an executor is to pay out of the estate of the testator the funeral and testamentary expenses and the debts of the testator.

The proper funeral expenses of the testator are to be paid out of his estate in priority to everything else, and except in the case of some small estates may be deducted from the value of the estate for the purpose of Probate or Administration (see p. 30).

Next to funeral expenses come testamentary expenses i.e., the cost of obtaining Probate or Administration, including estate duty and the cost of a solicitor where one is employed for the purpose.

Of a similar nature are the costs of administration of the estate, including the costs of an administration action. These like testamentary expenses are payable out of the estate in priority to all debts, whether the estate be administered by the Court or not (see p. 76).

PAYMENT OF DEBTS

After paying the testamentary expenses the executor must apply the proceeds of the estate in his hands in satisfying the testator's debts.

Debts are divided into several classes, which are entitled to be paid in a certain definite order, all the debts in one class having an equal right to priority. Those classes in the order of priority are as follow :—

(1) Debts due to the Crown by record or specialty. If credit has been given for estate duty, the duty for which such credit is given comes in this class.

(2) Certain other debts have priority under various statutes ; thus money due to the parish by an overseer ; money collected by an officer of a friendly society and not yet paid over to the society ; regimental debts of an officer or soldier, are payable in priority of the other debts of the deceased person.

(3) Next to these special debts come debts of record, i.e., judgment debts and recognisances and statutes, the latter of which are now obsolete.

(4) Next to these come debts by specialty, that is debts due on contracts under seal, such as bonds and mortgages.

(5) Last of all come debts by simple contract, i.e., on bills, notes, and verbal promises, express or implied.

Damages obtained against the estate for injury to property during the lifetime of the testator, rank as simple contract debts ; but damages for dilapidations payable by the executor of a deceased incumbent of a benefice to his successor are payable only after all the simple contract debts of the deceased have been satisfied.

An executor must not, where there is any chance of insufficiency of assets, pay a debt of inferior degree before one of superior degree of which he has notice, or he will be answerable personally for the latter, should the estate prove insufficient.

Debts of equal degree the executor may pay in any order he thinks fit, and he is entitled to pay himself, or, as it is called, retain any debt due to himself from the testator before paying any other debt of equal degree.

An *executor de son tort* has no right to retain.

Where an estate is not sufficient to pay all debts in full the personal representative should postpone payment and deal with the estate as insolvent.

STATUTE BARRED DEBTS

The executor is entitled to pay out of the estate a debt which at the time of payment is barred by the Statute of Limitations, but which has not been judicially declared irrecoverable, whether the time (in ordinary cases six years) limited has expired before or after the death of the testator, and he may retain a statute barred debt due to himself.

Except however in one case he is not bound to pay such a debt. This exception is where the time had not expired before the death of the testator and the will created a trust upon the real estate for the payment of debts. Such a trust prevents the statute from running further, but does not revive a debt which is already barred at the time of the testator's death. There must be an actual trust of real estate, a mere charge of debts on real estate or a trust of personal estate is not sufficient.

ORDER OF APPLICATION OF PROPERTY

SCHEDULE I

Part I

Rules as to Payment of Debts where the Estate is Insolvent

1. The funeral, testamentary, and administration expenses have priority.

2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

Part II

Order of Application of Assets where the Estate is Solvent

1. Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies.

2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

5. The fund, if any, retained to meet pecuniary legacies.

6. Property specifically devised or bequeathed rateably according to value.

7. Property appointed by will under a general power, including the statutory power to dispose of entailed interests, rateably according to value.

8. The following provisions shall also apply :—

(*a*) The order of application may be varied by the will of the deceased.

(*b*) This part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.

PROPERTY SUBJECT TO CHARGE

Section 35.—(1) Where a person dies possessed of, or entitled to, or, under a general power of appointment (including the statutory power to dispose of entailed interests) by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed, or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge ; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified :—

(*a*) By a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate ; or

(*b*) by a charge of debts upon any such estate; unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

The executor must be very careful to follow the above rules, or he may have difficulty with devisees or legatees. The law gives him unlimited power of dealing with the estate, but this power must be exercised in accordance with law, so as not to infringe the rights of others. Thus although the executor has power to sell any article which has been specifically bequeathed to a legatee, he has no right to do so unless all property not specifically left has been absorbed by the testator's debts, and should he do so he will be answerable to the legatee.

PAYMENT OF LEGACIES

Subject to any statutory provisions to the contrary, the executor is allowed one year from the death of the testator before he can be called on to pay or assent to any legacies or devises, or divide any residue. This is regarded as a reasonable time within which he ought to be able to get in the estate, see what debts are owing from it, and provide for paying them. There may, however, be debts or claims against the estate of which the executor is not aware, and the law provides for his relieving himself from liability for such matters before he proceeds to distribute the balance of the

estate among the devisees and legatees. In order to relieve himself from liability the executor should insert an advertisement in the *London Gazette, The Times,* and twice in some local paper circulating in the place where the testator resided, calling upon all creditors of the testator to send in their claims to him (the executor) or his solicitor within a specified time, and disclaiming liability for any claim not so sent in. The time allowed should not as a rule be less than one month. For form of advertisement see p. 162. An advertisement of this kind should always be given.

Having thus protected himself against the claims of unknown creditors, the executor may after paying or providing for all debts of which he has notice safely proceed to divide what is left among the legatees and devisees.

Although the executor is allowed a year before distributing the estate, he will in many cases not require to avail himself of this provision, and if he can distribute the estate sooner so much the better. This is especially the case with real estate, which the executor will probably be glad to get rid of at the earliest opportunity.

The real estate is vested in the executor, and remains vested in him until he disposes of it, or in case there be more than one executor until they all concur in disposing of it, either for payment of debts or by assenting to a devise of it.

ASSENT TO DEVISES

Section 36.—(1) A personal representative may assent to the vesting, in any person who (whether by

devise, bequest, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, including the statutory power to dispose of entailed interests, and which devolved upon the personal representative.

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) The statutory covenants implied by a person being expressed to convey as personal representative, may be implied in an assent in like manner as in a conveyance by deed.

(4) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

(5) Any person in whose favour an assent or conveyance of a legal state is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased, and that the probate or letters of administration be produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto.

(6) A statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate, shall, in favour of a purchaser, but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, be sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate to which the statement relates, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration.

A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative.

A personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration.

(7) An assent or conveyance by a personal representative in respect of a legal estate shall, in favour of a purchaser, unless notice of a previous assent or conveyance affecting that legal estate has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the

person entitled to have the legal estate conveyed to him, and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon.

(8) A conveyance of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.

(9) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(10) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same; and an assent may be given subject to any legal estate or charge by way of legal mortgage.

(11) This section shall not operate to impose any stamp duty in respect of an assent, and in this section

" purchaser " means a purchaser for money or money's worth.

(12) This section applies to assents and conveyances made after the commencement of this Act, whether the testator or intestate died before or after such commencement.

CONVEYANCE BY EXECUTOR

Section 37.—(1) All conveyances of any interest in real or personal estate made to a purchaser either before or after the commencement of this Act by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this Act, of the probate or administration.

(2) This section takes effect without prejudice to any order of the Court made before the commencement of this Act, and applies whether the testator or intestate died before or after such commencement.

Section 38.—(1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

(2) Notwithstanding any such assent or conveyance the Court may, on the application of any creditor or other person interested :—

(*a*) Order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the Court considers requisite for the purpose of giving effect to the rights of the persons interested ;

(*b*) declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes ;

(*c*) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order ;

(*d*) make any vesting order, or appoint a person to convey in accordance with the provisions of the Trustee Act, 1925.

(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the testator or intestate died before or after the commencement of this Act.

CHARGE BY TERM OF YEARS

Section 40.—(1) For giving effect to beneficial interests the personal representative may limit or demise land for a term of years absolute, with or without impeachment for waste, to trustees on usual trusts for raising or securing any principal sum and the interest thereon for which the land, or any part thereof, is liable, and may limit or grant a rent charge for giving effect to any annual or periodical sum for which the land or the income thereof or any part thereof is liable.

(2) This section applies whether the testator or intestate died before or after the commencement of this Act.

POSSESSION WITHOUT ASSENT

Section 43.—(1) A personal representative, before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and such possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to convey the land as if he were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

(2) Any person who as against the personal representative claims possession of real estate, or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, or to be registered as proprietor thereof under the Land Registration Act, 1925, may apply to the Court for directions with reference thereto, and the Court may make such vesting or other order as may be deemed proper, and the provisions of the Trustee Act, 1925, relating to vesting orders and to the appointment of a person to convey, shall apply.

(3) This section applies whether the testator or intestate died before or after the commencement of this Act.

DISTRIBUTION

Section 44.—Subject to the foregoing provisions of this Act, a personal representative is not bound to

distribute the estate of the deceased before the expiration of one year from the death.

The law regarding legacies is different according as they are pecuniary or residuary legacies, or specific legacies of definite chattels. The legatee of a pecuniary legacy cannot sue the executor for it, even though he has promised to pay it, and the same rule applies to shares in residue. In the case of specific legacies, however, as soon as the executor assents to the bequest, the thing bequeathed vests in the legatee, who can maintain an action for it against the executor should the latter refuse to hand it over.

There is no qualified assent subject to a charge allowable, as in the case of a devise of real property, so that the executor must be careful not to assent until he is sure the thing bequeathed is not required for payment of debts.

If the executor refuse for more than a year after the death of the testator to assent to a legacy or devise, the legatee, devisee, or heir may institute proceedings in the Chancery Division in order to obtain his assent.

ORDER OF PAYMENT OF LEGACIES

Specific legacies and devises must be satisfied before any others. If the estate be insufficient to admit of all being satisfied they must abate in proportion to their value. Thus if the total value of all the specific legacies and devises were £10,000 and there was a deficiency of £1,000, each legatee or devisee would be called on to contribute to the estate one-tenth of the value of his legacy or devise. This may be done in the case of a legacy, either by the legatee taking his legacy

and paying one-tenth of its value to the executor, or by the thing bequeathed being sold and one-tenth of the price being retained by the executor. In the case of a devise the devisee may find the proportionate amount, or the executor may raise it by mortgage before assenting to the devise.

Residuary devises of real estate come next in order, unless general pecuniary legacies are directed to be paid out of residuary real estate. Pecuniary legacies come next, and if necessary must abate proportionally. Residuary legacies come last in order, and the residuary legatees can take nothing until all other claims on the estate have been satisfied.

LEGACY TO EXECUTOR

There is a presumption that a legacy other than a residuary legacy given to an executor is given to him for acting as such, and in order to be entitled to it he must prove the will with the intention of acting under it, unless there are circumstances showing that it was intended for him personally. The fact that it is a deferred legacy is such a circumstance. Inequality in gifts to two executors may also rebut the presumption.

STATUTORY DUTIES, RIGHTS AND OBLIGATIONS

INVENTORY

Section 25.—The personal representative of a deceased person shall, when lawfully required so to do, exhibit on oath in the Court, a true and perfect inventory and account of the real and personal estate of the

deceased, and the Court shall have power as heretofore to require personal representatives to bring in inventories.

RECOVERY OF DEBTS

Section 26.—(1) For any debt (including arrears of rent) due to a deceased person, and for any injury to or right in respect of his personal estate in his lifetime, his personal representative shall have the same right of action as the deceased would have had if alive.

(2) The personal representative of a deceased person may maintain for any injury committed to the real estate of the deceased within six months before his death any action which the deceased could have maintained, but the action must be brought within one year after his death, and any damages recovered in the action shall be part of the personal estate of the deceased.

(3) A personal representative may distrain for arrears of a rent charge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rent charge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(4) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living.

Such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made :—

(*a*) Within six months after the termination of the lease or tenancy;

(*b*) during the continuance of the possession of the lessee or tenant from whom the arrears were due.

The statutory enactments relating to distress for rent apply to any distress made pursuant to this sub-section.

(5) An action may be maintained against the personal representative of a deceased person for any wrong committed by the deceased within six months before his death to another person in respect of his property, real or personal, but the action shall be brought within six months after the personal representative of the deceased has taken out representation.

Any damages recovered in the proceedings shall be payable as a simple contract debt incurred by the deceased.

(6) Nothing in this section affects any right of action conferred by the Fatal Accidents Act, 1846, as amended by any subsequent enactment.

INDEMNITY TO THIRD PARTIES

Section 27.—(1) Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation.

(2) Where a representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before the

revocation thereof are a valid discharge to the person making the same; and the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly made.

WRONGFUL RECEIPT OF ESTATE

Section 28.—If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting:

(*a*) Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and

(*b*) any payment made by him which might properly be made by a personal representative.

WASTE BY EXECUTOR DECEASED

Section 29.—Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the real or personal estate of the deceased, and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

PART III

Administration of Assets

Section 32.—(1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power (including the statutory power to dispose of entailed interests) disposes by his will, are assets for payment of his debts (whether by specialty or simple contract) and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the Court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.

This sub-section takes effect without prejudice to the rights of incumbrancers.

(2) If any person to whom any such beneficial interest devolves or is given, or in whom any such interest vests, disposes thereof in good faith before an action is brought or process is sued out against him, he shall be personally liable for the value of the interest so disposed of by him, but that interest shall not be liable to be taken in execution in the action or under the process.

INSOLVENT ESTATE

Section 34.—(1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I of the First Schedule to this Act.

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in

respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person.

Subject as aforesaid, nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors.

(3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of Court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the First Schedule to this Act.

APPROPRIATION TO LEGACY

Section 41.—(1) The personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, whether settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased :

Provided that :—

(i) An appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest.

(ii) An appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following consents :—

(*a*) When made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person.

(*b*) When made in respect of any settled legacy share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income.

If the person whose consent is so required as aforesaid is an infant or a lunatic or defective, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, committee or receiver, or if, in the case of an infant, there is no such parent or guardian, by the Court on the application of his next friend.

(iii) No consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time.

(iv) If no committee or receiver of a lunatic or defective has been appointed, then, if the appropriation is of an investment authorised

by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the lunatic or defective.

(v) If, independently of the personal representative, there is no trustee of a settled legacy share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy share or interest, provided that the appropriation is of an investment authorised as aforesaid.

(2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(3) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.

(4) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(5) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who

cannot be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this section.

(6) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made if no such appropriation had been made.

(7) If after any real estate has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents, if any, had been given.

(8) In this section a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, also an annuity, and " purchaser " means a purchaser for money or money's worth.

(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property

over which a testator exercises a general power of appointment, including the statutory power to dispose of entailed interests, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

THE INFANT LEGATEES AND DEVISEES

Section 39.—(1) In dealing with the real and personal estate of the deceased his personal representatives shall, for purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have :—

(i) The same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Act, with respect to personal estate vested in him, and such power of raising money by mortgage may in the case of land be exercised by way of legal mortgage ; and

(ii) all the powers, discretions and duties conferred or imposed by law on trustees holding land upon an effectual trust for sale (including power to over-reach equitable interests and powers as if the same affected the proceeds of sale) ; and

(iii) all the powers conferred by statute on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded by him, and, in the case of a contract

entered into by a predecessor, as if it had been entered into by himself.

(2) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.

(3) This section applies whether the testator or intestate died before or after the commencement of this Act.

Section 42.—(1) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Act (in this sub-section called "the deceased") to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue or share for the infant, and to be trustees of any land devised or any land being or forming part of such residue or share for the purposes of the Settled Land Act, 1925, and of the statutory provisions relating to the management of land during a minority, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.

On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue, or share, and

the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment.

(2) Where a personal representative has before the commencement of this Act retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the Court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into Court.

REGISTERED LAND

Land in certain districts must and in any district may have the title registered at the Land Registry and is then dealt with by entry of any change of title on the register.

Where a deceased person is the proprietor of land on the register or of a registered charge, the following sections of the Land Registration Act, 1925, affect the personal representatives :—

Section 41.—(1) On the death of the sole proprietor, or of the survivor of two or more joint proprietors, of any registered land or charge, the personal representative of such sole deceased proprietor, or of the survivor of such joint proprietors, shall be entitled to be registered as proprietor in his place :

Provided that, where a special or additional personal representative is appointed by the Court in reference to a registered estate, then on production of the order

he shall be registered as proprietor either solely or jointly with any of the other personal representatives, as the case may require, and a copy of the order shall be filed at the registry.

(2) Pending an application for the appointment of a special or additional personal representative, a caution against dealings may be lodged under this Act by any person intending to apply to the Court for the appointment.

(3) Subject as aforesaid, provision shall be made by rules for the manner in which effect is to be given on the register to transmissions on death.

(4) An assent by a personal representative shall, in the case of registered land, be in the prescribed form and the production of the assent in that form shall authorise the registrar to register the person named in the assent as the proprietor of the registered land.

Section 43.—Any person registered in the place of a deceased or bankrupt proprietor shall hold the land or charge in respect of which he is registered upon the trusts and for the purposes upon and subject to which the same is applicable by law, and subject to any minor interests subject to which the deceased or bankrupt proprietor held the same ; but, save as aforesaid, he shall in all respects, and in particular as respects any registered dealings with such land or charge, be in the same position as if he had taken such land or charge under a transfer for valuable consideration.

Section 45.—The fact of any person having become entitled to any registered land or charge in consequence of the death or bankruptcy of any proprietor shall be proved in the prescribed manner.

Section 37.—(1) Where a person on whom the right to be registered as proprietor of registered land or of a registered charge has devolved by reason of the death of the proprietor, or has been conferred by a disposition or charge, in accordance with this Act, desires to dispose of or charge the land or to deal with the charge before he is himself registered as proprietor, he may do so in the prescribed manner, and subject to the prescribed conditions.

SETTLED LAND

Settled land is by Section 86 (1) to be registered in the name of the tenant for life or statutory owner and thus devolves on his personal representatives on his death; where there is an intestacy with an infant beneficiary or a tenant for life there is a settlement.

Section 87.—(1) On the death of a proprietor, or of the survivor of two or more joint proprietors of settled land (whether the land is settled by his will or by an instrument taking effect on or previously to his death), his personal representative shall hold the settled land subject to payment or to making provision for payment of all death duties and other liabilities affecting the land, and having priority to the settlement, upon trust to transfer the same by an assent in the prescribed manner to the tenant for life or statutory owner, and in the meantime upon trust to give effect to the minor interests under the settlement; but a transfer shall not be made to an infant.

(2) Rules may be made:—

(*a*) For enabling a personal representative or proprietor in proper cases to create legal estates

by registered dispositions for giving effect to or creating interests in priority to the settlements ;

(*b*) to provide for the cases in which application shall be made by the personal representative or proprietor for the registration of restrictions or notices ; and

(*c*) for discharging a personal representative or former proprietor who has complied with the requirements of this Act and rules from all liability in respect of minor interests under a settlement.

SETTLED REGISTERED LAND

Section 91.—The following provisions shall have effect as respects settled land (being registered land) during a minority :—

(1) The personal representatives under the will or intestacy under which the settlement is created or arises shall, during the minority, be registered as proprietors, and in reference to the settled land shall have all the powers conferred by the Settled Land Act, 1925, on a tenant for life and on the trustees of the settlement ; but if and when the personal representatives would, if the infant had been of full age, have been bound to transfer the registered land to him, the personal representatives shall (unless themselves the statutory owners) thenceforth during the minority give effect on the register to the directions of the statutory owner, and shall apply for the registration of any restriction which may be prescribed, but shall not be concerned with the propriety of any registered disposition so directed to be made if the

same appears to be a proper disposition under the powers of the statutory owner and the capital money, if any, arising under the disposition is paid to the trustees of the settlement or into Court; but a purchaser dealing with the personal representatives, who complies with the restrictions, if any, which may be entered on the register, shall not be concerned to see or inquire whether any such directions have been given:

(2) If an infant becomes entitled in possession (or will become entitled in possession on attaining full age) to registered land otherwise than on a death, the statutory owners during the minority shall be entitled to require the settled land to be transferred to them and shall be registered as proprietors accordingly:

(3) If and when the registered land would (if not registered) have become vested in the trustees of the settlement pursuant to the Law of Property Act, 1925, such trustees shall (unless they are already registered) be entitled to be registered as proprietors thereof, and shall in the prescribed manner apply for registration accordingly, and no fee shall be charged in respect of such registration or consequential alteration in the register.

Section 94.—(1) Where registered land is subject to a trust for sale, express or implied, whether or not there is power to postpone the sale, the land shall be registered in the names of the trustees for sale.

CHAPTER VII

DISTRIBUTION OF ESTATE ON INTESTACY

The Administration of Estates Act, 1925, provides as follows :—

Section 33.—(1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives :

(*a*) As to the real estate upon trust to sell the same ; and

(*b*) as to the personal estate upon trust to call in sell and convert into money such part thereof as may not consist of money,

with power to postpone such sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the personal representatives see special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special reason.

(2) Out of the net money to arise from the sale and conversion of such real and personal estate (after payment of costs), and out of the ready money of the deceased (so far as not disposed of by his will, if any), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and

other liabilities as are properly payable thereout having regard to the rules of administration contained in this part of this Act, and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.

(3) During the minority of any beneficiary or the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the said money, or so much thereof as may not have been distributed, in any investments for the time being authorised by statute for the investment of trust money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.

(4) The residue of the said money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for the administration purposes aforesaid, is in this Act referred to as "the residuary estate of the intestate."

(5) The income (including net rents and profits of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs and other outgoings properly attributable to income) of so much of the real and personal estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes aforesaid, may, however such estate is invested, as from the death of the deceased, be treated and applied as

income, and for that purpose any necessary apportionment may be made between tenant for life and remainderman.

(6) Nothing in this section affects the rights of any creditor of the deceased or the rights of the Crown in respect of death duties.

(7) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will.

DESCENT OF LAND

Section 45.—(1) With regard to the real estate and personal inheritance of every person dying after the commencement of this Act, there shall be abolished :—

(*a*) All existing modes, rules and canons of descent, and of devolution by special occupancy or otherwise, of real estate, or of a personal inheritance, whether operating by the general law or by the custom of gavelkind or borough English or by any other custom of any county, locality, or manor, or otherwise howsoever ; and

(*b*) Tenancy by the curtesy and every other estate and interest of a husband in real estate as to which his wife dies intestate, whether arising under the general law or by custom or otherwise ; and

(*c*) Dower and freebench and every other estate and interest of a wife in real estate as to which her husband dies intestate, whether arising under the general law or by custom or otherwise : Provided that where a right (if any) to freebench or other like right has attached before the commencement of this Act which cannot be barred

by a testamentary or other disposition made by the husband, such right shall, unless released, remain in force as an equitable interest; and

(*d*) Escheat to the Crown or the Duchy of Lancaster or the Duke of Cornwall or to a mesne lord for want of heirs.

(2) Nothing in this section affects the descent or devolution of an entailed interest.

DISTRIBUTION OF RESIDUARY ESTATE

Section 46.—(1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:—

(i) If the intestate leaves a husband or wife (with or without issue) the surviving husband or wife shall take the personal chattels absolutely, and in addition the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of one thousand pounds, free of death duties and costs, to the surviving husband or wife with interest thereon from the date of the death at the rate of five pounds per cent. per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held:

(*a*) If the intestate leaves no issue, upon trust for the surviving husband or wife during his or her life;

(*b*) If the intestate leaves issue, upon trust, as to one half, for the surviving husband or

wife during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate; and, as to the other half, on the statutory trusts for the issue of the intestate, but if those trusts fail or determine in the lifetime of a surviving husband or wife of the intestate, then upon trust for the surviving husband or wife during the residue of his or her life:

(ii) If the intestate leaves issue but no husband or wife, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate.

(iii) If the intestate leaves no issue but both parents, then, subject, to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely.

(iv) If the intestate leaves no issue but one parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely.

(v) If the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:—

First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate;

but if no person takes an absolutely vested interest under such trusts ; then

Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate ; but if no person takes an absolutely vested interest under such trusts ; then

Thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares ; but if there is no member of this class ; then

Fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate) ; but if no person takes an absolutely vested interest under such trusts ; then

Fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate) ; but if no person takes an absolutely vested interest under such trusts ; then

Sixthly, for the surviving husband or wife of the intestate absolutely.

(vi) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as *bona vacantia*, and in lieu of any right to escheat.

The Crown or the said Duchy or the said Duke may (without prejudice to the powers reserved by Section Nine of the Civil List Act,

1910, or any other powers), out of the whole or any part of the property devolving on them respectively, provide, in accordance with the existing practice, for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

STATUTORY TRUSTS

Section 47.—(1) Where under this part of this Act the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely :—

(i) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose

parent is living at the death of the intestate and so capable of taking.

(ii) The statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest.

(iii) Where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives.

(iv) The personal representatives may permit any infant contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider

reasonable, and without being liable to account for any consequential loss.

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest :—

(*a*) The residuary estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve and be held under the provisions of this part of this Act as if the intestate had died without leaving issue living at the death of the intestate.

(*b*) References in this part of this Act to the intestate "leaving no issue" shall be construed as "leaving no issue who attain an absolutely vested interest."

(*c*) References in this part of this Act to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue who attain an absolutely vested interest."

(3) Where under this part of this Act, the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

REDEMPTION OF LIFE INTEREST

Section 48.—(1) Where a surviving husband or wife is entitled to a life interest in the residuary estate or any part thereof the personal representative may, either with the consent of any such tenant for life (not being also the sole personal representative), or, where the tenant for life is the sole personal representative, with the leave of the Court, purchase or redeem such life interest (while it is in possession) by paying the capital value thereof (reckoned according to tables selected by the personal representative) to the tenant for life or the persons deriving title under him or her and the costs of the transaction, and thereupon the residuary estate of the intestate may be dealt with or distributed free from such life interest.

(2) The personal representatives may raise :

(*a*) The net sum of one thousand pounds or any part thereof, and the interest thereon payable to the surviving husband or wife of the intestate on the security of the whole or any part of the residuary estate of the intestate (other than the personal chattels), so far as that estate may be sufficient for the purpose or the said sum and interest may not have been satisfied by an appropriation under the statutory power available in that behalf ; and

(*b*) In like manner the capital sum, if any, required for the purchase or redemption of the life interest of the surviving husband or wife of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate ;

and in either case the amount, if any, properly required for the payment of the costs of the transaction.

PARTIAL INTESTACY

Section 49.—Where any person dies leaving a will effectively disposing of part of his property, this part of this Act shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will and subject to the following modifications :—

(*a*) The requirements as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons.

(*b*) The personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this part of this Act in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficially.

CHAPTER VIII

ACCOUNTS

When applying for Probate or Administration a personal representative binds himself by oath or its equivalent that he will well and truly administer the estate of the deceased, and that he will exhibit a true and perfect inventory of the estate and render a just and true account thereof whenever required by law so to do.

Any person interested in the estate, whether as next of kin or as a legatee or a creditor, may call upon the personal representative to exhibit an inventory of the estate and render an account of his administration thereof, and disobedience to an order of the Court to do so will render him liable for contempt.

It is thus most essential that every executor or administrator should keep clear and distinct accounts of all the property he has to administer; he should never mix property belonging to the estate with other property; he should at the earliest opportunity open a separate banking account for the purpose of the trust, and give the bank clear intimation that it is a trust account. All monies received on account of the trust should be paid into this bank account at the earliest opportunity, and payments of all kinds on account of the trust should be by cheque payable to order. An account should be kept of all small cash expenses incurred by the personal representative in the course

of and incidental to the administration, and these can be balanced by cheques payable to his own order on the trust account. If a personal representative mixes the accounts of the estate with his own or any other accounts, he can be compelled to produce all the original books in which parts of those accounts may be inserted.

An administrator or an executor, unless expressly authorised by the will, is not entitled to make any profit direct or indirect from the administration of the estate.

Thus an executor cannot buy debts owing from the testator's estate for his own benefit, and should he purchase in his own name the equity of redemption of a property mortgaged to the testator he will hold it in trust for the estate.

A solicitor executor is not entitled, without express authority, to charge profit costs for work done by him on behalf of the estate.

At the same time, though he is bound to give his personal attention and work without remuneration, an executor is not expected to incur any expense out of his own pocket, but has a right to charge all out of pocket expenses to the estate, and such expenses form a first charge on the estate.

An executor is entitled to any costs, charges, and expenses properly incurred by him in the administration of the estate. For any work for which a solicitor would ordinarily be employed he is entitled to employ a solicitor, but he will not be allowed the charges of his solicitor for doing things which the executor ought strictly to have done himself, such as charges for

attendances to pay premiums on policies, at a bank to make transfers, on auctioneers in reference to sales, or on legatees or creditors to pay legacies or debts.

It has been laid down that the term " executorship expenses " in a will means expenses incident to the proper performance of the duty of an executor, and includes costs incurred by executors in obtaining the advice of solicitors or counsel as to the distribution of their testator's estate ; also the costs of the executors and other parties in an action, whether instituted by the executors themselves or by a beneficiary, for the administration of the testator's personal estate ; also the testator's funeral expenses ; also expenses incurred by the executors for the protection of specific legacies as for instance, for warehousing furniture specifically bequeathed, pending the distribution of the assets ; and payments by the executors in discharge of debts falling due from the testator's estate after his death, as, for instance, rent due after the testator's death for a house of which he was tenant from year to year.

CHAPTER IX

CARRYING ON THE BUSINESS OF DECEASED

THERE is always a certain amount of risk incurred by executors in carrying on the business of the deceased, since they are in all cases personally liable for any debts incurred by them in so doing. In case of an intestacy, or where there is no provision express or implied in the will as to carrying on the business, the personal representative is entitled to carry on the business only for the purpose of realization, and if he confines himself to doing this he is entitled to be indemnified by the estate against all liabilities properly incurred by him in so doing, both as against creditors of the estate, and also as against beneficiaries. If he goes beyond this he is personally liable for any debts so incurred without any right to an indemnity out of the estate. At the same time any assets acquired by him in the course of such trading belong to the estate, subject to his right to be indemnified for what he has actually spent in obtaining such assets.

If the will expressly or impliedly authorize the personal representatives to carry on the business, and to employ the whole or part of the estate in so doing, the personal representatives are entitled to be indemnified out of such part of the estate as is applicable for the purpose of the business, and the creditors of the business as carried on by the personal representatives are entitled to stand in their place and to claim that the

fund out of which the personal representatives are entitled to be indemnified shall be applied for payment of their debts. The creditors, however, are in no better position as regards such fund than the personal representative would have been. Where the testator's creditors have acquiesced in the personal representative carrying on the business after the testator's death, the personal representatives are entitled in priority to the testator's creditors to be indemnified out of the estate for all the liabilities which they have properly incurred, and the same applies to creditors in respect of debts incurred in the course of carrying on the business after the testator's death.

Where on the other hand creditors of the testator did not both know that the personal representatives were carrying on the business and acquiesce therein their claim is preferred to that of the personal representatives, and the creditors of the business as carried on by them.

An authority to executors to carry on the business does not authorize the *administrator cum testamento* to do so. If infants are interested in an estate the Court in England has no jurisdiction to authorize an administrator to carry on a trade, but this rule does not hold in Ireland.

The Public Trustee may only carry on a business with a view to winding up or sale where there is no risk of loss.

CHAPTER X

QUESTIONS ARISING IN ADMINISTERING AN ESTATE

If an executor or administrator wrongly construes a will, and, in consequence, though acting in perfect good faith, distributes the estate wrongly, he is liable to make good any part of the estate he has parted with wrongly with interest at 4 per cent.

If then there be any doubt in the mind of a personal representative as to what is the meaning of any part of the will, or as to who are the persons entitled to share in the estate, or in what proportions they are entitled, it is most necessary for him either to get legal advice on the matter or to ask the Court for directions. A trustee or personal representative is allowed what he has expended in reasonably and properly taking opinions and procuring directions that are necessary for the due execution of the trust, so that he may consult a solicitor or barrister or apply to the Court for directions at the cost of the estate.

A personal application to the Court by originating summons, for which the fee is 10s., is an inexpensive and safe means of getting advice when the personal representative is in or near London; but this course will involve several visits to the Royal Courts of Justice and the expenditure of a good deal of time.

The following remarks of Mr. Justice Stirling, in the case of in *re* Partington, are well worth consideration : " If a trustee is distributing a fund, and any difficulty arises as to the persons who may be entitled, he can have recourse to the court, and he would be completely indemnified by the order of the court. If, under those circumstances, he chooses to rely on the advice of a solicitor or the opinion of counsel, he gets no indemnity and he must take the consequences of so doing. The same remark applies to many other acts of trustees, and the facilities which are now given for coming and obtaining the opinion of the court as to matters in the administration of the trust are so great, that in that class of cases the rule to which I have referred is not in the least likely to be relaxed."

The cheapest way of applying to the Court is by means of an originating summons, provided for by the following rules of the Supreme Court :—

By Order LV., Rule 3, R.S.C.

The executors or administrators of a deceased person or any of them, and any person claiming to be interested in the relief sought, as a creditor, devisee, legatee, next-of-kin, or heir-at-law, or customary heir of a deceased person, or as *cestui que* trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid may take out as of course an originating summons returnable in the chambers of a judge of the Chancery Division for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case require (that is to say) the determination without an

administration of the estate or trust of any of the following questions or matters :—

(*a*) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin, or heir-at-law, or *cestui que* trust.

(*b*) The ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others.

(*c*) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts.

(*d*) The payment into Court of any money in the hands of the executors or administrators, or trustees.

(*e*) Directing the executors or administrators or trustees to do, or abstain from doing, any particular act in their character as such executors or administrators or trustees.

(*f*) The approval of any sale, purchase, compromise, or other transaction.

(*g*) The determination of any question arising in the administration of the estate or trust.

By Rule 4, any of the persons named in the preceding rule may apply for and obtain an order for :

(*a*) The administration of the personal estate of the deceased.

(*b*) The administration of the real estate of the deceased.

(*c*) The administration of the trust.

An executor or trustee is entitled to costs in an administration action as between solicitor and client (in addition to any costs, charges, and expenses properly

incurred by him, not being costs in the action) unless it is established that he has been guilty of some misconduct which would justify the judge in depriving him of them.

CHAPTER XI

LEGACY DUTY

"EVERY gift by any will or testamentary instrument of any person, which by virtue of any such will or testamentary instrument is or shall be payable, or shall have effect, or be satisfied out of the personal or moveable estate or effects of such person or out of any personal or moveable estate or effects which such person hath had, or shall have power to dispose of, whether such gift shall be by way of annuity, or in any other form, and also every gift which shall have effect as a donation *mortis causâ* shall be deemed a legacy, and shall be subject and liable to duties on legacies accordingly. Provided always that no sum of money which by any marriage settlement is or shall be subjected to any limited power of appointment to or for the benefit of any person or persons therein specially named or described as the object or objects of such power, or to or for the benefit of the issue of any such person or persons shall be liable to the said duties on legacies under the will in which such sum is or shall be appointed or apportioned in exercise of such power."

For the purpose of legacy duty leaseholds are considered as real estate.

A share in residue under an intestacy is a legacy so far as liability to duty is concerned.

A direction in a will to pay debts is not a legacy, but a direction to pay debts with interest (where they do not of themselves bear interest) is a legacy so far as the interest is concerned.

A direction to pay another person's debts is a legacy, probably to the person whose debts are to be paid though in some cases it may be considered a legacy to the creditors of such person.

A bequest by will of a specific sum which the testator has covenanted to bequeath is not a legacy subject to duty, but a bequest of a share in residue, although made in conformity with a covenant is subject to duty.

The forgiveness of a debt by will is a legacy chargeable with duty if the debt is at the time of the testator's death recoverable at law.

A legacy subject to a condition is liable to duty, as for instance a legacy to an executor on condition of his acting as such.

Legacy duty is payable only when the testator or intestate dies domiciled in the United Kingdom ; but it is then payable in respect of all his personal property wherever situate.

Personal property includes real property wherever situate which forms part of partnership assets and also real property which is impressed in any other way in equity with the character of personal property.

In order to be liable to legacy duty the property must be either actually or by operation of law the property of the person under whose will the legacy arises. Thus, if A leave money to B, and in the event of B predeceasing him to the personal representatives

of B ; this does not make it liable to legacy duty under B's will should B predecease A. But if A leave a legacy to B his child, and B dies in the lifetime of A, but leaves children so that the legacy does not lapse but goes as though B had died immediately after A, then it is liable to double legacy duty both under A's will and under B's.

If a testator gives a legacy out of property belonging to someone else, and gives the person something else, such person may choose whether to keep what he has or take what is left him, but cannot keep both ; if he choose to give up what he has so that it goes to the other legatee, apparently succession and not legacy duty is payable upon it. The person giving up such property may deduct its value from that of anything he receives in calculating the amount of legacy or succession duty payable.

Where the gift of a legacy is subject to a power of appointment conferred by the will, and this power is afterwards exercised, the persons appointed under it are regarded as legatees under the original will and are liable for legacy duty as though the appointment had been part of that will.

Conversely if a power of appointment conferred by deed be executed by will, the persons in whose favour it operates take under the deed as though the will were incorporated in it and are not legatees under the will.

There is however one exception to this, viz., when a person has a general power of appointment, and would in default of his exercising such power be the owner of the property, then the property is treated as though it had belonged to the person possessing such

general power, so that if he exercise it by will, the property goes as a legacy under his will.

Money or personal property directed to be applied in the purchase of real estate is treated as personal property for the purpose of legacy duty, unless it be given to be enjoyed by several persons in succession in which case each person on becoming entitled is liable to pay legacy duty only in respect of any part that has not been actually laid out in real estate; on the part laid out in real estate he is liable to succession duty.

Any legacy payable or having effect or being satisfied out of or charged upon, or rendered a burden upon the real or heritable estate of any person dying, or any real or heritable estate, or the rents and profits thereof which such person shall have had any right or power to charge, burden, or affect with the payment of money or out of or upon any monies to arise from the sale mortgage or other disposition of any such real or heritable estate or any part thereof, is liable to succession duty as a succession to personal property.

If a legacy take the form of an annuity for any life or lives, or for years or other period of time, the value of such legacy must be calculated according to certain tables given at p. 162, and the legacy duty in respect of such annuity is payable by four equal payments, the first to be made before or upon completing the payments of the first year's annuity, and the other three in the like manner for the next three years.

If the annuity end by the death of any person before four years payment thereof has become due and

payable, the duty is payable in proportion only to so many of the payments of the annuity as have actually accrued and become due and payable.

If an annuity be determinable on any contingency (e.g. marriage) besides the death of any person, its value must be calculated without regard to such contingency; if however, by such contingency happening the annuity does determine, any payments of duty which would have become due after the happening of the contingency cease to be payable, and the persons who have paid any duties already due may apply for and obtain a return of so much of the duty so paid as is in excess of what would have been payable had the value of the annuity been calculated for the term for which it actually lasted.

If an annuity be payable out of a legacy, the duty on the annuity must be calculated in like manner and paid by four annual instalments by the person entitled to the legacy; and any legacy duty on the legacy is to be calculated on the value of the legacy, less the value of the annuity. The payments of duty on account of the annuity are to be retained by the person entitled to the legacy out of the first four years' payments of the annuity, or out of such smaller number as shall become due.

If the will give directions to purchase out of the personal estate an annuity for life or lives or any other term, the value of such annuity for the purpose of legacy duty is to be taken as the value of such annuity according to the tables, and the annuity actually purchased is to be reduced in proportion to the amount of duty payable.

Thus, if the will directed an annuity of £50 for life to be purchased for some person not related to the testator. The executor would take the value of an annuity for £50, according to the table pay 10 per cent. of this value as legacy duty and purchase an annuity for £45.

If a benefit be given by will in such a way that its value can only be ascertained as payments are from time to time made in respect of it, legacy duty is to be charged on the several sums or effects from time to time applied as though each were a separate legacy.

If a legacy or residue be given to be enjoyed by several persons in succession the method of paying the duty varies according to whether such persons are liable to pay at the same or different rates.

If they are all liable for the same rate the duty is payable as in the case of a legacy to one person by the personal representatives on handing over the fund to the trustees in whom it is to be vested.

If they are chargeable with different rates of duty each person is chargeable when he becomes entitled to begin to receive the annual produce of the fund, or any part thereof with duty as on an annuity, equal to the annual produce or part thereof to which he becomes entitled, and such duty is payable by four equal annual instalments as above. If any person becomes absolutely entitled to the fund, or any part thereof, he is liable on so becoming entitled to pay duty as on an immediate legacy.

In these cases the duty is payable by the personal representatives or other trustees in whom the property is vested at the time when such duty becomes payable.

Where any legacy or residue is given to or for the benefit of any person or persons in joint tenancy, any one of them who is liable to pay legacy duty must pay such duty in proportion to his interest ; if he afterwards by survivorship or severance of the joint tenancy becomes entitled to any larger interest than that in respect of which he has paid duty, he must pay further duty on the increment to which he so becomes entitled.

If a legacy or residue other than an annuity be given subject to a contingency which may defeat such gift and whereupon the same may go to some other person or persons, the contingency must not be regarded in calculating the amount of duty payable and cannot be recovered on the happening of the contingency ; but if on the happening of the contingency the next person entitled would have been liable to a higher rate of duty than that already paid he must pay the difference.

Specific legacies and residue of personal estate consisting of property not reduced to money, may be valued by the personal representatives, and they may offer to pay legacy duty according to such value. Or the personal representatives may require the Commissioners of Inland Revenue to appoint a valuer to value the legacy at the expense of the legatee.

The former is the simplest course, and the Commissioners usually accept the value so set upon the legacy.

The personal representatives should require the legatee to pay the amount of the duty before they hand over the legacy.

No duty is payable in respect of any articles of plate, furniture, or other things not yielding any income

whilst the same are enjoyed in kind only by any person not having any power of selling or disposing thereof, so as to convert the same into money or other property yielding an income ; but if the same be actually sold or disposed of, or come to any person or persons having power to sell or dispose thereof, or having an absolute interest therein, then legacy duty is chargeable and must be paid by the person or persons, for whose benefit the same are sold, or who have power to sell or dispose thereof, or an absolute interest therein.

The duty is a debt of such person or persons, but is not a charge on any person by reason of his having assented to such bequest as personal representative.

Where any legacy duty or succession duty is presumptively payable in respect of any interest in expectancy in a legacy or residue, or in personal property comprised in a succession, and the duty (if any) payable upon the interest in possession has been fully paid and satisfied, the Commissioners of Inland Revenue, may, in their discretion, upon the application of the executor or trustee or other person who would be accountable for the duty in respect of such interest in expectancy, if it were then in possession, commute the duty presumptively payable for a certain sum down.

For assessing the amount which must be paid the Commissioners must value the presumptive duty, regard being had of any contingencies affecting the liability to duty, and the interest of money involved in the calculation being reckoned at the rate for the time being allowed by the Commissioners in respect of duties paid in advance, under the Succession Duty Act, 1853.

Upon the receipt of the sum fixed the Commissioners shall give a discharge for the duty accordingly.

The Commissioners of Inland Revenue may upon the application of the personal representatives, and upon the delivery to them of an account showing the amount of the estate and effects, together with the names or description of the persons entitled thereto, and every part thereof in possession or expectancy, and their degrees of consanguinity to the testator, assess the duty at such a sum by way of composition as they think proper, and accept payment of the duty so assessed in full discharge of all claims for legacy duty under such will.

The Commissioners may require the assent of any person before entertaining the application.

RATES OF LEGACY DUTY

The following are the rates of Legacy Duty :—

Husband or wife and children of the deceased or their descendants or the father or mother or any lineal ancestor pay	£1 per cent.
Brother or sister of the deceased or their descendants	£5 per cent.
Brothers and sisters of the father or mother, grandfather or grandmother of the deceased, or their descendants, or any person in any other degree or collateral consanguinity, or a stranger in blood of the deceased	£10 per cent.

A legatee whose husband or wife is of nearer relationship to the deceased is chargeable at the lower rate.

Where a deceased estate is less than £1,000 legacy duty is not payable, and where there is a slight excess over £1,000 the duty payable must not exceed such excess.

Where the principal value of property passing, other than property in which deceased never had an interest and property of which deceased never was competent to dispose, and which passes to persons other than the husband, wife, or lineal descendant or ascendant, does not exceed £15,000, or where the amount of all legacies and successions derived by the same person from the testator does not exceed £1,000, or in the case of a widow or a child under twenty-one £2,000, the 1 per cent. duty is not payable.

EXEMPTIONS

Legacies left by a person dying domiciled out of the United Kingdom are not subject to legacy duty. Legacies of books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles, bequeathed to or in trust for any body corporate, whether aggregate or sole, or to any of the Inns of Court or any endowed school, in order to be kept and preserved by such body corporate, society, or school, and not for the purpose of sale or otherwise excused from estate duty, are not subject to legacy duty.

A specific legacy under the value of £20 is exempt from legacy duty.

Legacies are frequently left free from legacy duty. A gift expressed to be free from all expenses, or to be paid clear, or with some similar expression, must be paid in full to the legatee, and the legacy duty must be paid by the executor out of the fund indicated for that purpose, or if no fund be specially indicated, out of the residue. The duty thus paid, although, in fact, equivalent to an increase in the legacy, is not subject to legacy duty.

Thus a legacy of £100 to a stranger gives him £90 and gives £10 to the Inland Revenue, while a legacy of £90 free from duty only pays £9 to the Inland Revenue.

LEGACY DUTY BY WHOM AND HOW PAID.

The personal representatives are primarily liable for the payment of legacy duty on all legacies or parts of legacies retained or paid by them.

It is their duty whenever they deliver (if in specie) or pay (if in money) a legacy, or part of a legacy, to the legatee, either to receive from the legatee the amount of legacy duty payable, or deduct that amount from the legacy, and to pay the legacy duty so received or deducted to the proper authorities within twenty-one days.

No personal representative or trustee or other person required to pay or account for legacy duty, may pay, deliver, or otherwise dispose of, or in any manner satisfy or discharge or compound for any legacy or residue of personal estate, or any part thereof liable to legacy duty or apply the same for the benefit of any person or persons entitled thereto, without taking a receipt or discharge in writing for the same, expressing

(*a*) The date of such receipt or discharge.

(*b*) The name of the testator, testatrix, or intestate, under whose will or intestacy the title to such legacy or residue, or part thereof, arises.

(*c*) The name of the person to whom such receipt or discharge is given.

(*d*) The name of the person to whom the legacy or residue is due.

(*e*) The amount or value of the legacy or residue or part thereof for which the receipt or discharge is given.

(*f*) The amount and rate of the duty allowed.

Every such receipt or discharge must be, within twenty-one days after the date on which the same was given, be brought to the head office of the Inland Revenue Commissioners, or to some other office of Inland Revenue, where the amount of the duty must be paid, and the officer will write on the receipt or discharge an acknowledgment for the duty.

If this be done at the Head Office the receipt or discharge will be at once stamped, if it be at a branch office it should be left there for the officer to get it stamped. He will give a written acknowledgment for it which can afterwards be exchanged for the receipt or discharge duly stamped.

The personal representative must be very careful to comply with all these particulars, as non-compliance will render him liable to heavy penalties.

The proper receipt forms can be obtained free from any Inland Revenue Office or Money Order Office.

Receipts for legacies or residue on which legacy duty is payable do not require the ordinary receipt stamp.

When a personal representative becomes entitled to retain for his own use any part of the estate in satisfaction of a legacy or residue or any part thereof, he must before such retainer transmit to the Commissioners for Inland Revenue or their officers a note containing particulars of such legacy, residue, or part intended to be retained, and the amount or value of the same, and the duty which is offered to be paid thereon. The Commissioners will charge and assess the duty, and such duty must be paid ; and on such payment being made the personal representative will be furnished with a receipt for the duty paid.

The duty ought to be paid before retainer, but the personal representative is given fourteen days within which to pay it. If the duty be not paid within fourteen days after it ought to have been paid, the person liable to pay it must pay treble the value of the duty which ought to have been paid.

When an executor, administrator, or trustee, shall have given notice in writing to the Commissioners of Inland Revenue for any claim to legacy duty, or succession duty in respect of any fund in his hands which he intends to distribute, and shall have delivered to the Commissioners all particulars which they may require in order to ascertain the existence and extent of any such claim, he shall be at liberty to distribute the fund amongst the parties entitled thereto, after satisfaction of any claims made by the Commissioners, and shall be entitled to receive from them a certificate discharging him from his liability to any duty in respect of the fund.

CHAPTER XII

LEGACIES TO INFANTS AND OTHER PERSONS INCAPABLE OF GIVING A RECEIPT

If any person entitled to a legacy or to residue under a will or intestacy administered in England be an infant or abroad, or the circumstances be such that the personal representatives are unable to obtain his receipt or discharge, they, or the majority of them, may, under the Trustee Act, 1893, pay the legacy or residue into the High Court, and the receipt of the proper officer is a sufficient discharge to them for the amount of the legacy or residue.

If the administration be in Scotland, it seems that the personal representatives may pay such legacy or residue, after deducting the legal duty chargeable thereon, into the Bank of England, with the privity of the Paymaster-General (of the Supreme Court) to be placed to the account of the person or persons for whose benefit the same is paid ; and on production of a certificate from the Inland Revenue that the duty has been paid, discharge for the legacy or revenue will be given by the Paymaster-General.

LODGMENTS IN COURT

By Rule 41, Supreme Court Funds Rules, 1894, where a legal personal representative desires to lodge funds in Court, under the Trustee Act, 1893, without

an affidavit, he shall leave with the paymaster a request signed by him or his solicitor, with a certificate of the Commissioners of Inland Revenue ; such request and certificate to be in the Form No. 16 (see p. 164) with such variations as may be necessary. The money or securities so lodged shall be placed to the credit mentioned in such request. Lodgment directions may be applied for and sent by post.

For *cash* the directions for lodgment will be ready not later than the afternoon of the day following the receipt of the schedule or request.

For *securities* the directions for lodgment will be ready the second day following the receipt of the schedule or request.

Forms can be obtained in rooms Nos. 6, 419, and 420. Deviations from the authorized Forms cannot be allowed.

Stamps.---A request to pay lodge transfer or deposit in Court requires a one shilling stamp impressed on the request.

A request for information in writing in respect of any money funds or securities or any transaction in the pay office requires a one shilling stamp, adhesive or impressed.

When a trustee or other person desires to lodge funds in Court in the Chancery Division, under The Trustee Act, 1893, upon an affidavit, he shall annex to such affidavit a schedule in the same printed form as the lodgment schedule to an order, setting forth :—

(*a*) His own name and address.

(*b*) The amount and description of the funds proposed to be lodged in Court.

(*c*) The ledger credit in the matter of the particular trust to which the funds are to be placed.

(*d*) A statement whether legacy or succession duty (if chargeable) or any part thereof has or has not been paid.

(*e*) A statement whether the money or the dividends on the securities so to be lodged in Court and all accumulations of dividends thereon are desired to be invested in any and what description of Government securities, or whether it is deemed unnecessary so to invest the same.

An office copy of such schedule is to be left with the paymaster.

All funds to be paid into or deposited in Court shall be paid or deposited at the Bank of England (Law Courts branch), or in the case of funds to be lodged in Court in the district registries of the High Court in Liverpool or Manchester at the branch banks of the Bank of England in Liverpool or Manchester, and placed in the books of the bank to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature, and the bank shall cause a receipt to be given to the person making the payment or deposit.

All securities to be transferred into Court shall be transferred to the said account in the books ot the bank or other company in whose books such securities are registered.

Any effects brought to the bank to be so deposited in Court shall be deposited in locked boxes, or in such other secure manner as shall satisfy the bank; and before taking custody of a box the agent or other

officer acting on behalf of the bank may, at his discretion, require an inspection of its contents in presence of the person depositing it.

Cheques for lodgment of money are to be made payable to the Bank of England (Law Courts branch) for the account of the Paymaster-General (and not to the paymaster personally).

CHAPTER XIII

SUCCESSION DUTY

Every disposition of property by which any person becomes beneficially entitled to any property or the income thereof, or to any increase of benefit therefrom accruing, upon the death of any person, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person, confers on the person entitled by reason of such disposition or devolution a succession; the person so entitled is called the successor, and the person from whom the interest of the successor is derived is called the predecessor.

The succession arises on the happening of the death by reason of which the successor or any person in his right or on his behalf becomes entitled in possession to the succession or to the receipt of the income or profits thereof.

The predecessor is not necessarily the person upon whose death the successor becomes entitled, though this is the case when the successor takes as heir under an entail or an intestacy. Thus, if A by deed convey land to B for life with remainder to C; on the death of B, C takes a succession, not from B but from A. A somewhat curious case arises when one person, A, gives another, B, a power of appointment of property on the death of a third person which is duly exercised in favour of D. The succession of D, on the death of C,

is derived not from B, who appointed him, but from A, who created the power of appointment under which D was appointed. If, however, B have a general power of appointment (under which he might appoint himself) under a disposition of property by A taking effect upon the death of any person, and B exercises such power in favour of C, B on exercising such power is deemed to take the property appointed as a succession from A, the donor of the power, and the interest of C is regarded as derived from B. Thus, if A by will left property as B might appoint, B, on making an appointment, would take a succession to A.

If joint tenants become entitled to property under any title which confers a succession on them jointly, and one of them takes the share of another by survivorship, he takes it as a succession from the predecessor, from whom the joint succession was derived ; if, however, their joint tenancy does not arise by way of a succession, a share taken by survivorship comes as a succession from the deceased joint tenant.

A disposition of property not being a *bona fide* sale, and not conferring an interest expectant on the death of the person in whose favour it is made, accompanied by the reservation, or assurance of, or contract for any benefit to the grantor, or any other person, determinable on death, confers on the determination of such benefit, a succession from the grantor to the person in whose favour the disposition was made equal in annual value to the annual value of the benefit reserved, and if such a disposition, though purporting to be absolute, and to take effect immediately, does not, in fact, do so, the beneficial ownership actually passing

on death, such disposition is deemed to confer a succession on such death. (Thus, if A conveys property to B by deed of gift, but at the same time B agrees to pay A an annuity, or to let A continue in possession as long as he lives; on the death of A, B takes a succession from A equal in value to that of the annuity, or of the property, as the case may be).

RATES OF SUCCESSION DUTY

Successor, husband, wife, lineal issue or lineal ancestor of predecessor, 1 per cent.

This duty is not payable under any disposition under which estate duty is payable.

Successor, brother or sister, or nephew or niece of predecessor, 5 per cent.

Successor, uncle or aunt, great-uncle or great-aunt, or descendant uncle or aunt or great-uncle or great-aunt of predecessor, or related in any other degree, or a stranger in blood, including an illegitimate child, or parent of person domiciled abroad, 10 per cent.

Where an estate passing under a will or intestacy is under £1,000 succession duty is not payable, and there are the same exemptions for 1 per cent. duty as for legacy duty (see p. 133).

Illegitimate children who have been legitimated after birth according to the law of the country of domicile of their parents are regarded as children for the purposes of succession and legacy duties.

Where any person chargeable with legacy or succession duty shall have been married to any wife or husband, for whom the rate of duty would have been less, such person has to pay at such less rate of duty only.

If a wife settles property on her husband's second wife (if any) and his issue by her, the second wife and her issue are chargeable as strangers in blood.

If a person entitled to property expectantly on the death of another, disposes thereof, and under his own disposition succeeds to the property, he is chargeable with duty as though he had succeeded without having so disposed of the property; except in this case, a person is not chargeable with duty on a succession arising under his own disposition.

Where the interest of any successor in any personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor or successors, then one duty shall be due from the successor who shall first become entitled thereto in possession, but such duty shall be at the highest rate, which, if every such successor had been subject to duty, would have been payable by any one of them.

It will be remembered that in the case of legacy duty the various duties on successive devolutions accumulate so that a person may have to pay duty several times over on the same legacy. Both legacy and succession duty cannot be charged on the same property at the same time, but when either can be charged the highest will be chosen.

If a person entitled in expectancy to a succession transfers his interest to someone else in such a way as not to confer a new succession, duty is payable on the property falling into possession at the same rate (the rate at the time of alienation) and time as if no such alienation has been made. If the title to a succession

be accelerated by the surrender or extinction of any prior interests, the duty is payable as if no such acceleration has taken place.

EXCEPTIONS

Where the value of the whole succession, or successions derived from the same predecessor, and passing upon any death to any person or persons is less than £100 no succession duty is payable.

Monies applied to the payment of succession duty according to a trust for that purpose are exempt from succession duty.

Where a succession, if it were a legacy bequeathed by the predecessor, would be exempt from legacy duty, it is exempt from succession duty.

Succession duty is payable in respect of any property or interest therein as the same falls into possession, so that if there be any outstanding interests when property falls into possession, duty will be payable on the value of the whole property, less that of the outstanding interests, and duty on these latter will be payable as they fall in. Thus, on succession to a ground rent, at least by a person not competent to dispose of the property, duty will be payable only on the value of the rent, irrespective of the reversion, and on the lease falling in further duty will be payable in respect of the difference between the ground rent and the full rack-rental value of the property.

If the successor were competent to dispose of the ground rent the duty would be payable on the market value, less any estate duty payable on the same death.

The duty on a succession in expectancy may be commuted for a certain sum to be paid at the time of commutation.

In estimating the value of a succession no allowance is made for incumbrances created or incurred by the successor, unless made in execution of a prior special power of appointment. Allowance is made for other actual incumbrances (but when the successor is not competent to dispose of the property only to the extent of the annual sums payable as interest or otherwise thereunder, such yearly sums being taken account of in estimating the net annual value) and also for monies expended by the successor on substantial repairs and permanent improvements to real property.

No allowance is made in the first instance for contingent incumbrances, or for contingencies, other than his death, which may put an end to the successor's enjoyment of the property, but should such contingencies happen the duty paid in excess of that due on the actual value will be returned.

Allowance is also made for the value of any other property not acquired by the successor under any title conferring a succession on him, which passes from the successor to some other person where the successor upon taking a succession is bound to relinquish or is deprived of such property.

For the purpose of payment of succession duty, property is divided into two classes, under the heads "real property" and "personal property." "Real property" for this purpose includes leasehold as well as freehold and what is usually comprised under the title real, and it also includes monies arising from the

sale of real estate, where subject to a trust for reinvestment in the purchase of other real estate, provided the successor be not absolutely entitled. "Personal property" includes all other kinds of property, and includes legacies payable, or having effect, or being satisfied out of, or charged, or rendered a burden upon real estate, or the rents or profits thereof.

SUCCESSION DUTY ON REAL PROPERTY

Where the Successor is Competent to Dispose of Property

The value of a succession to real property to a person competent to dispose of the property is the principal value (see p. 43) of the property after deducting the estate duty payable on the same death, and the expenses, if any, properly incurred in raising the same. The duty is a charge on the property, and is payable in the same instalments as estate duty (see p. 60) with like interest, the first instalment being due one year after the date at which the successor becomes entitled in possession to the property of the income and profit thereof. The duty is a first charge on the property as it comes to the successor.

Where Successor is not Competent to Dispose of Property

Where the successor to an interest in real property is not competent to dispose of the property, the value, on which duty has to be paid, is that of an annuity for the life of the successor equal to the net annual value of the property. The calculation of such value being by the table given at p. 163.

Where the property yields an income of a fluctuating character, the annual value is a matter of arrangement with the Commissioners of Inland Revenue, and if the property is a timber one the duty on it is payable yearly on the interest of the successor in the net monies produced during the year. If the amount in any year be less than £10, no duty is payable in respect thereof; the duty may be commuted by arrangements with the Commissioners. Where property is subject to a lease renewable upon payment of a fine, duty is paid on the rent only, but when a fine is received duty on the successor's interest in the fine must be paid.

Where the property is subject to fines, etc., incident to the tenure thereof, and due in respect of the succession, the amount of such fines, etc., may be deducted from the value of the successor's interest.

PAYMENT OF DUTY ON REAL PROPERTY.

The successor has the choice of three methods of payment:—

(1) By eight equal half-yearly instalments, the first being due one year after the property comes into possession; if the successor should die before all the instalments are due, they cease to be payable.

(2) By two equal moieties, the first to be paid by four equal yearly instalments, the first of which is due at the end of one year from the time when the property comes into possession; the second moiety may be paid at the end of the fourth year, or by four yearly instalments, commencing at the end of the fifth year, with interest from the end of the fourth year, at 4 per cent. on the part unpaid.

If the successor die before the end of the fourth year, the amount still payable is to be reduced by the like amount, as though payment were being made by eight half-yearly instalments, as in (1).

(3) The successor may pay the whole duty in advance and receive discount thereon, but this should, in all cases, be done before the first instalment becomes due.

The duty is a debt charged on the interest of the successor, and after his death becomes a debt due out of his estate.

Where the property becomes subject to a trust for any charitable or public purposes, in such a way as would confer a succession, a duty of 10 per cent. on the principal value is payable, and must be paid, in all cases, in one sum, which may be raised by the trustees by means of a charge on the property.

TIMBER

Succession duty on timber, etc., is payable with estate duty on similar property (see p. 45).

SUCCESSION DUTY ON PERSONAL PROPERTY

Succession duty on a succession to an interest in personal property is payable in precisely the same manner as legacy duty on a legacy of the same interest would be payable (see p. 127).

If the successor be competent to dispose of the property the duty is immediately payable on the principal value of the property ; if he be not competent to dispose thereof the duty is payable by four annual instalments.

The successor is the person primarily accountable for succession duty ; but to the extent of the property or funds actually received and disposed of by them, any trustee (including a personal representative) or guardian in whom any property, or the management of any property subject to duty, is vested when the succession becomes an interest in possession is also accountable for the duty, and has authority to compound or pay in advance or commute the duty, and to retain the amount so paid out of the property, or raise the necessary amount by a charge on the property, which will have priority to any charge or incumbrance created by the successor. If the duty be not paid each person accountable for the same is a debtor to the Crown for the amount of unpaid duty.

The persons so accountable for the payment of duty must, in the case of personal property, at the time of the first payment delivery retainer satisfaction or other discharge of the same or any part thereof to or for the successor or any person in his right, and in the case of real property, when any duty first becomes payable, give notice to the Commissioners of Inland Revenue of their liability to such duty, and deliver a true account of the property for the duty whereon they are accountable, and of the value thereof, and of the deductions claimed, with the names of the successor and predecessor, and their relation to each other, and any other particulars as may be necessary to enable the duty to be assessed.

Failure to comply with these requirements makes a person subject to penalties.

FORM OF RENUNCIATION OF PROBATE

In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

PROBATE

THE PRINCIPAL PROBATE REGISTRY.

IN THE GOODS OF . . DECEASED

WHEREAS A.B., of....., deceased, died on the last day of..... 19..., at ....., having made and duly executed his last will and testament, bearing date the.....day of....., 19..., and thereof appointed me the undersigned C.D. executor.

Now I, the said C.D., do hereby declare that I have not intermeddled in the personal estate of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby renounce all my right and title to the probate and execution of the said will.

Signed by the said C.D. this.....
.....day of....., 19.....
in the presence of.....

(Signed) C.D.

INSTRUCTIONS FOR OBTAINING PROBATE OR ADMINISTRATION WITHOUT EMPLOYING A SOLICITOR

(Obtained from Somerset House.)

DEPARTMENT FOR PERSONAL APPLICATIONS.
Room 44.

Principal Probate Registry, Somerset House, Strand, London, W.C.2.

1. The office hours of the Department are 10 till 4. Saturdays 10 till 1. **Applicants are advised to attend as early in the day as possible.**

2. Applications must be made in person and not by letter.

No business of any kind can be transacted by correspondence with this Department. Any information required that is not stated on this form with reference to proving Wills or taking out Letters of Administration may be obtained by applying in the first instance to Room 44.

The business of the Department cannot be transacted with an agent, but only with the Applicant.

A second attendance is necessary after the forms have been completed and instructions taken.

3. Applicants should bring with them (1) the Will (if any), (2) a **Registrar's Certificate of the Death,** (3) an account of the whole property, with duplicate lists of Stocks and Shares, Leasehold Property and Real Estate, (4) a list in duplicate of the debts

and funeral expenses of the Deceased, where such deductions can be made (see p. 154). Applicants are advised to have these Forms completed before they attend.

It is most essential that Applicants should give accurately in the schedule the number of Shares and the exact name and description of all investments, and the quotation, in the Official Stock and Share List, on the day of the Deceased's death, of such Stocks and Shares. If errors occur in giving these particulars it may necessitate further attendances at this Department by Applicants.

Where investments are not quoted in the Official List, letters must be brought in from the Secretaries of Companies giving the actual value at the date of Deceased's death.

4. **Executors.**—In the case of more than one Executor being appointed under a Will, it is not necessary for all the Executors to prove the Will. Power can be reserved to the other Executors to prove later, should it be necessary to do so.

It is not necessary for more than one of the proving Executors to attend on the first occasion.

5. **Bond.**—Except in the case of an Executor proving in person, every Applicant, upon being sworn, must also enter into a bond with two Sureties for the faithful administration of the estate, but where the Applicant is the Husband of the Deceased, or the gross estate does not exceed £50, one Surety is sufficient. Under special circumstances, Sureties may be allowed to attend separately. They must be responsible persons and over twenty-one years of age. Married

women are not accepted as sureties to a bond except under special circumstances.

Sureties should attend on the second occasion.

Stamp Duty of 5s. is payable on the bond if the gross estate exceeds £100.

6. **Fees and Estate Duty.**—When the *gross* value of the estate (real and personal) exceeds £500, debts and funeral expenses may be deducted, and the fees and duty are determined by the *net* value of the property and other circumstances.

Where the *gross* value of the Estate (real or personal) does not exceed £500, a fixed fee of 15s. may be paid. The Estate Duty in such instances is 30s. if the property exceeds £100 and does not exceed £300, and 50s. if it exceeds the latter amount. No deduction for debts or funeral expenses is allowed in these cases. But where the deceased died on or after the 30th April, 1909, and left property upon which he had created a charge or borrowed money in order to complete the purchase, and the amount is thereby not in excess of £300 or £500, as the case may be, the 30s. or 50s. Duty may be paid and the fixed fee of 15s., and should the amount be reduced below £100, the fixed fee of 15s. only.

The fees payable by a widow or a child of an Intestate, whose whole personal estate, without any deductions, does not exceed £100, vary from 5s. to 13s.

APPLICATION AT A DISTRICT REGISTRY.—Application may be made at any District Registry mentioned below whatever the amount of the Estate.

ENGLAND AND WALES.

District Probate Registries and their Districts.

REGISTRIES.	DISTRICTS.
Bangor	Counties of Carnarvon and Anglesey.
Birmingham	County of Warwick, including city of Coventry.
Blandford	County of Dorset, including the town of Poole.
Bodmin	County of Cornwall.
Bristol	Bristol and Bath present county court districts.
Bury St. Edmunds	Western division of the county of Suffolk.
Canterbury	East division of the county of Kent, including the city of Canterbury, and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.
Carlisle	Counties of Cumberland and Westmoreland.
Carmarthen	Counties of Cardigan, Carmarthen, including the town of Carmarthen, and Pembroke, including the town of Haverfordwest, with the deaneries of East and West Gower, in the County of Glamorgan.
Chester	The county and city of Chester.
Chichester	Western division of the county of Sussex.
Derby	County of Derby.
Durham	County of Durham.
Exeter	County of Devon, including the city of Exeter.
Gloucester	County and city of Gloucester, except the present Bristol county court district.
Hereford	Counties of Radnor, Brecknock, and Hereford.
Ipswich	Eastern division of the county of Suffolk and north division of the county of Essex.

Lancaster	County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester.
Leicester	Counties of Leicester and Rutland.
Lewes	Eastern division of the county of Sussex including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.
Lichfield	County of Stafford, including the city of Lichfield.
Lincoln	County and city of Lincoln.
Liverpool	Hundred of West Derby in Lancashire.
Llandaff	Counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth.
Manchester	City of Manchester and hundred of Salford.
Newcastle-upon-Tyne	County of Northumberland, including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.
Northampton	The town of Northampton, county of Bedford, and southern division of Northamptonshire.
Norwich	County of Norfolk, including the city of Norwich.
Nottingham	County and city of Nottingham.
Oxford	Counties of Oxford (including the University), Berks, and Bucks.
Peterborough	Northern division of Northampton and counties of Huntingdon and Cambridge including the University of Cambridge.
St. Asaph	Counties of Flint, Denbigh, and Merioneth.
Salisbury	County of Wilts.
Shrewsbury	Counties of Salop and Montgomery.
Taunton	Western division of the County of Somerset.
Wakefield	West Riding of the county of York.
Wells	Eastern division of the county of Somerset, except the present Bath county court district, and the part of Somersetshire of the present Bristol county court district.
Winchester	County of Hants, including the town of Southampton and Isle of Wight.
Worcester	City and county of Worcester.

York ..... North and East Ridings of the county of York, including the city of York and Ainsty, and the town and county of Kingston-upon-Hull.

APPLICATION AT A CUSTOMS AND EXCISE OFFICE.—Where the whole property, without deduction of debts or funeral expenses, does not exceed £500, application may be made at any of the offices mentioned below. The fee payable is 15s. in all cases ; and the Estate Duty, where the property exceeds £100, is 30s. if not exceeding £300, or 50s. if not exceeding £500, but *see* Section 6 on page 154. *An Appointment should be applied for by Letter.*

ANGLESEY—
Holyhead.

BEDFORD—
Bedford.
Leighton Buzzard.
Luton.

BERKS—
Abingdon.
Maidenhead.
Newbury.
Reading.
Windsor.

BRECON—
Brecon.
Builth.
Crickhowell.

BUCKINGHAM—
Aylesbury.
Newport Pagnell.
Wycombe.

CAMBRIDGE—
Cambridge.
Ely.
Wisbech.

CARDIGAN—
Aberayron.
Aberystwith.
Cardigan.

CARMARTHEN—
Ammanford.
Llanelly.

CARNARVON—
Bangor.
Pwllheli.

CHESTER—
Birkenhead.
Chester.
Crewe.
Macclesfield.
Stalybridge.
Whitchurch.

CORNWALL—
Camborne.
Chacewater.
Falmouth.
Grampound Road.
Hayle.
Helston.
Launceston.
Lostwithiel.
Penzance.
Redruth.
St. Austell.
Saltash.
Truro.
Wadebridge.

CUMBERLAND—
Carlisle.
Millom.
Penrith.
Whitehaven.

DENBIGH—
Colwyn Bay.
Llangollen.
Ruthin.
Wrexham.

DERBY—
Bakewell.
Belper.
Chapel-en-le-Frith
Chesterfield.
Derby.
Glossop.

DEVON—
Barnstaple.
Bideford.
Chulmleigh.
Dartmouth.
Devonport.
Exeter.
Honiton.
Ilfracombe.
Kingsbridge.
Newton Abbot.
Okehampton.
Paignton.
Plymouth.
Tavistock.
Torquay.
Totnes.

DORSET—
Dorchester.
Poole.
Sherborne.
Weymouth.

DURHAM—
Darlington.
Gateshead.
North and South Shields.
Stockton.
Sunderland.
West Hartlepool.
Wolsingham.

ESSEX—
Barking.
Chelmsford.
Clacton-on-Sea.
Colchester.
Dunmow.
Felstead.
Halstead.
Maldon.
Romford.
Saffron Walden.
Southend-on-Sea.
Stratford.

FLINT—
Rhyl.

GLAMORGAN—
Aberdare.
Cardiff.
Merthyr Tydfil.
Neath.
Pontypridd.
Swansea.

GLOUCESTER—
Bristol.
Cheltenham.
Chipping Sodbury
Cirencester.
Gloucester.
Lydney.
Stow-on-the-Wold
Stroud.
Tetbury.
Tewkesbury.
Thornbury.
Wickwar.

HANTS—
Aldershot.
Alton.
Andover.
Basingstoke.
Bournemouth.
Havant.
Newport, I.O.W.
Petersfield.
Portsmouth.
Ryde.
Shanklin.
Southampton.
Winchester.

HEREFORD—
Hereford.
Kington.
Leominster.

HERTFORD—
Berkhamsted.
Bishop's Stortford
Hertford.
High Barnet
Hitchin.
Hoddesdon.
St. Albans.
Watford.

HUNTINGDON—
Huntingdon.
St. Ives.
St. Neots.

KENT—
Ash.
Ashford.
Bromley.
Canterbury.
Chatham.
Cranbrook.
Dartford.
Deal.
Dover.
Folkestone.
Gillingham.
Gravesend.
Greenwich.
Herne Bay.
Hythe.
Lydd.
Maidstone.
Margate.
Orpington.
Plumstead.
Ramsgate.
Rochester.
Sheerness.
Sittingbourne.
Strood.
Tonbridge.
Tunbridge Wells.
Westerham.

LANCASTER—
Accrington.
Ashton-under-Lyne.
Barrow-in-Furness
Blackburn.
Blackpool.
Bolton.
Burnley.
Bury.
Colne.
Lancaster.
Liverpool.
Manchester.
Oldham.
Preston.
Rochdale.
St. Helens.
Southport.
Stockport.
Ulverston.

Warrington.
Wigan.

LEICESTER—
Leicester.
Loughborough.
Market Harborough.
Melton Mowbray.

LINCOLN—
Boston.
Gainsborough.
Grantham.
Grimsby.
Lincoln.
Louth.
Skegness.
Sleaford.
Stamford.

MERIONETH—
Dolgelly.
Penrhyndeudraeth.

MIDDLESEX—
Acton.
Brentford.
Chiswick.
Enfield.
Harrow.
Hornsey.
Hounslow.
Southall.
Staines.
Tottenham.
Uxbridge.

MONMOUTH—
Abergavenny.
Blaenavon.
Blaina.
Chepstow.
Monmouth,
Newport.
Pontypool.
Usk.

MONTGOMERY—
Llanidloes.
Machynlleth.
Newtown.
Welshpool.

NORFOLK—
Dereham, East.
King's Lynn.
Norwich.
Thetford.
Yarmouth.

NORTHAMPTON—
Brackley.
Kettering.
Northampton.
Peterborough.
Wellingborough.

NORTHUMBERLAND
Alnwick,
Berwick.
Blyth.
Newcastle-on-Tyne.
Rothbury.

NOTTINGHAM—
Mansfield.
Newark.
Nottingham.
Retford.
Worksop.

OXFORD—
Banbury.
Chipping Norton.
Oxford.
Witney.

PEMBROKE—
Fishguard.
Haverfordwest.
Narberth.
Pembroke.

SALOP—
Bishop's Castle.
Bridgnorth.
Ludlow.
Madeley.
Newport.
Oswestry.
Shrewsbury.
Wellington.

SOMERSET—
Bath.
Bridgwater.
Burnham.
Chard.
Crewkerne.
Frome.
Glastonbury.
Oakhill.
Radstock.
Shepton Mallet.
Taunton.
Weston-super-Mare.
Yeovil.

STAFFORD—
Bilston.
Brierley Hill.
Burslem.
Burton-on-Trent.
Hanley.
Leek.
Lichfield.
Newcastle-under-Lyme.
Smethwick.
Stafford.
Stoke-on-Trent.
Tipton.
Tunstall.
Uttoxeter.
Walsall.
Wednesbury.
West Bromwich.
Wolverhampton.

SUFFOLK—
Bury St. Edmunds
Halesworth.
Ipswich.
Lowestoft.
Saxmundham.
Southwold.
Stowmarket.
Sudbury.
Woodbridge.

SURREY—
Camberley.
Croydon.
Farnham.
Guildford.
Kingston-on-Thames.
Mitcham.
Reigate.
Richmond.
Wallington.
Weybridge.
Wimbledon.

SUSSEX—
Arundel.
Brighton.
Chichester.
Eastbourne.
Hastings.
Lewes.
Steyning.
Worthing.

WARWICK—
Birmingham.
Coventry.
Leamington.
Nuneaton.
Stratford-on-Avon

WESTMORELAND—
Kendal.

WILTS—
Chippenham.
Devizes.
Marlborough.
Salisbury.
Swindon.
Trowbridge.
Westbury.

WORCESTER—
Bromsgrove.
Dudley.
Evesham.
Kidderminster.
Malvern.
Redditch.
Stourbridge.
Stourport.
Worcester.

YORK, WEST RIDING—
Barnsley.
Bradford.
Castleford.
Dewsbury.
Doncaster.
Halifax.
Harrogate.
Huddersfield.
Hull.
Keighley.
Leeds.
Ripon.
Rotherham.
Selby.
Settle.
Sheffield.

NORTH RIDING—
Leeming Bar.
Malton.
Middlesbrough.
Richmond.
Scarborough.
York.

SCOTLAND.

ABERDEEN—
Aberdeen.
Huntley.
Peterhead.

AYR—
Kilmarnock.

ARGYLL—
Campbeltown.
Oban.
Port Ellen.

CAITHNESS—
Thurso.
Wick.

CLACKMANNAN—
Alloa.

DUMFRIES—
Dumfries.

EDINBURGH—
Edinburgh.

ELGIN—
Elgin.
Forres.
Grantown.
Rothes.

FIFE—
Dunfermline.
Kirkcaldy.
Ladybank.
Markinch.
Windygates.

FORFAR—
Brechin.
Dundee.
Montrose.

INVERNESS—
Carbost.
Dunvegan.
Fort William.
Inverness.
Kingussie.
Lochmaddy.
Lochboisdale (South Uist)
Portree.

LANARK—
Glasgow.

LINLITHGOW—
Bo'ness.

NAIRN—
Nairn.

PERTH—
Crieff.
Perth.
Pitlochry.

RENFREW—
Greenock.
Paisley.

ROSS—
Dingwall.
Edderton.
Fortrose.
Gairloch.
Lochcarron.
Stornoway.
Tain.
Ullapool.

ROXBURGH—
Hawick.

STIRLING—
Falkirk.
Stirling.

SUTHERLAND—
Brora.
Tongue.

FORM OF ADVERTISEMENT BY EXECUTORS FOR CREDITORS TO SEND IN THEIR CLAIMS.

(See p. 59).

..... deceased. Notice is hereby given pursuant to the Act of Parliament 22 and 23 Vic. c. 35, that all persons having any CLAIMS or DEMANDS upon or against the ESTATE of..... late of..... in the County of ..... deceased who died on the.....day of..... 19..... and whose Will was proved by.....and..... the Executors therein named on the.....day of..... 19.....in the.....Registry of the Probate Division of the High Court of Justice are hereby required to send in the particulars of their debts or claims to the said Executors at..... on or before the.....day of..... 19..... And notice is hereby also given that after that day the said Executors will proceed to distribute the assets of the said deceased amongst the parties entitled thereto having regard only to the claims of which they shall then have had notice and that they will not be liable for the assets or any part thereof so distributed to any person of whose debt or claim they shall not then have had notice.

Dated this.....day of.....19.....

N.B.—This notice must be signed by a Solicitor in order to secure its insertion in the *London Gazette*.

TABLE OF THE VALUES OF AN ANNUITY OF £100 PER ANNUM HELD ON A SINGLE LIFE.

Table I. of the Schedule to the Succession Duty Act, 1853.

Year of Age.		£	s.	d.	Year of Age.		£	s.	d.
Birth	...Value...	1892	8	6	30	...Value...	1644	7	6
1	... „ ...	1906	13	0	31	... „ ...	1632	0	0
2	... „ ...	1919	2	0	32	... „ ...	1619	0	6
3	... „ ...	1926	8	0	33	... „ ...	1605	4	0
4	... „ ...	1928	16	0	34	... „ ...	1590	9	6
5	... „ ...	1926	19	6	35	... „ ...	1574	17	6
6	... „ ...	1921	12	0	36	... „ ...	1558	9	6
7	... „ ...	1913	4	6	37	... „ ...	1541	10	6
8	... „ ...	1902	16	6	38	... „ ...	1524	0	0
9	... „ ...	1890	19	6	39	... „ ...	1506	1	6
10	... „ ...	1878	3	0	40	... „ ...	1487	10	0
11	... „ ...	1864	7	0	41	... „ ...	1468	4	0
12	... „ ...	1849	12	0	42	... „ ...	1447	11	6
13	... „ ...	1833	18	6	43	... „ ...	1426	2	0
14	... „ ...	1817	7	6	44	... „ ...	1403	10	0
15	... „ ...	1800	8	6	45	... „ ...	1379	14	6
16	... „ ...	1783	13	0	46	... „ ...	1354	16	6
17	... „ ...	1767	16	0	47	... „ ...	1321	2	6
18	... „ ...	1753	5	0	48	... „ ...	1300	9	6
19	... „ ...	1740	11	0	49	... „ ...	1271	19	6
20	... „ ...	1729	9	6	50	... „ ...	1242	19	6
21	... „ ...	1719	17	0	51	... „ ...	1213	17	0
22	... „ ...	1713	1	0	52	... „ ...	1185	14	0
23	... „ ...	1706	16	6	53	... „ ...	1157	17	6
24	... „ ...	1700	11	6	54	... „ ...	1130	13	0
25	... „ ...	1694	0	0	55	... „ ...	1103	18	0
26	... „ ...	1686	14	6	56	... „ ...	1077	10	0
27	... „ ...	1677	5	6	57	... „ ...	1051	10	0
28	... „ ...	1667	1	0	58	... „ ...	1025	10	0
29	... „ ...	1656	1	0	59	... „ ...	999	1	0

Year of Age.		£	s.	d.
60	...Value...	972	1	0
61	... ,, ...	942	15	6
62	... ,, ...	914	2	0
63	... ,, ...	883	6	0
64	... ,, ...	852	9	0
65	... ,, ...	821	12	6
66	... ,, ...	790	15	0
67	... ,, ...	761	19	0
68	... ,, ...	733	8	6
69	... ,, ...	705	4	0
70	... ,, ...	677	9	0
71	... ,, ...	650	8	0
72	... ,, ...	623	19	6
73	... ,, ...	597	7	6
74	... ,, ...	569	13	0
75	... ,, ...	541	0	6
76	... ,, ...	511	9	6
77	... ,, ...	477	17	0
78	... ,, ...	444	9	6
79	... ,, ...	412	9	6

Year of Age.		£	s.	d.
80	...Value...	381	3	0
81	... ,, ...	350	14	0
82	... ,, ...	321	14	0
83	... ,, ...	292	10	6
84	... ,, ...	263	2	6
85	... ,, ...	234	18	6
86	... ,, ...	207	16	0
87	... ,, ...	184	11	6
88	... ,, ...	164	17	6
89	... ,, ...	148	7	0
90	... ,, ...	133	9	0
91	... ,, ...	122	16	0
92	... ,, ...	107	7	0
93	... ,, ...	93	3	0
94	... ,, ...	79	8	6
95	... ,, ...	64	11	0

[FORM No. 16.]

Trustee Act, 1925. Legacy (or Share of Residue) of E.F., under the will (or intestacy) of C.D.

A.B., the executor of the will (*or* administrator of the estate) of C.D., deceased, whose will was proved (*or* of whose effects letters of administration were granted) on the.....day of....., proposes to lodge in Court to the credit of " Legacy to (*or* share of residue of) E.F., an infant (*or* beyond seas) under the will (*or* intestacy) of C.D.," the sum of £.....* (*or* the following securities representing) the full amount (*or* part) of such legacy (*or* share of residue) to which the said E.F. is absolutely entitled [*describe securities, if any, which must be such as the Paymaster can properly accept*].

*No deduction for costs and expenses must be made from the amount to be paid in.

CERTIFICATE OF COMMISSIONERS OF INLAND REVENUE

(TO ACCOMPANY ABOVE REQUEST).

(*a*) If duty has been paid.

Reg.....of the year..... Fo.....

I certify that the sum of £.....was paid on the .....day of....., for legacy duty, at the rate of..... per cent., in respect of the above-mentioned [*state amount of money or describe securities*] payable to .....described as a..... of the deceased.

Dated the.....day of.....

By order of the Commissioners of Inland Revenue.

(*Signed*) .....

(*b*) If no duty chargeable.

I certify that no Legacy or Succession Duty is chargeable in respect of the before-mentioned [*state amount of money or describe securities*] payable to..... described as.....of the deceased, inasmuch as such sum is, *or* such securities are, exempt from the payment of such duties by virtue of the provisions of *s*..... of.....

But under the provisions of s. 58 (2) of the Finance (1909–10) Act, 1910, Legacy or [and] Succession Duty may become payable in respect of the before-mentioned [*state amount of money or describe securities*] and it is requested that the before-mentioned [*state amount of money or describe securities*] may not be paid out of Court until the concurrence of the Commissioners of Inland Revenue has been obtained (I.R. Stop. s. 58).

Dated this.....day of.....192.....

By order of the Commissioners of Inland Revenue,

ASSISTANT CONTROLLER, Estate Duty Office.

Pay Office—No. 11.

[RULE 30.]

[Cash Lodgment—Infant Legatees, &c.]

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

I. *Request for Direction for Lodgment.*

Ledger Credit (*Fol.* .....) } .....

The Paymaster is hereby requested to issue a

direction to the Bank to receive from.....
.....
the sum of £....., to be lodged pursuant to the Trustee Act, 1925, and a Certificate of the Commissioners of Inland Revenue.

(*Signature*).....

II. *Paymaster's Direction for Lodgment.*

TO THE AGENT OF THE BANK OF ENGLAND
(Law Courts Branch.)

Please receive the above-stated sum, and place it to the account of the Paymaster-General, for and on behalf of the Supreme Court of Judicature.

(*Signature*).....

III. *Bank Certificate of Receipt.*

TO THE ASSISTANT PAYMASTER-GENERAL.

Bank of England,.....19....

The above-stated sum has been this day received.

For the Governor and Company of the Bank of England.

(*Signature*)..... .....

Entd. No.....]

FORMS IN USE FOR PAYMENT OF ESTATE DUTY

(see p. 56).

AFFIDAVITS :—

Where the deceased died ON OR AFTER *the 1st January*, 1898 :—

A–7. Inland Revenue Affidavit for Probate or Administration, except where B–2, A–4, or A–5 is applicable.

No. 17. Summary of Duty and Interest. To accompany Form A–3.

B–2. Inland Revenue Affidavit for Probate or Administration where the GROSS principal value of the property, real and personal, in respect of which Estate Duty is leviable on the death of the deceased, *exclusive* of property settled otherwise than by the will of the deceased, does not exceed £500 (except where the *gross* value exceeds £100, but the *net* value does not exceed £100), *and*, if any Estate Duty is payable thereon, the fixed duty of 30s. or 50s. is to be paid.

NOTE.—Where, in the circumstances of the case, the *ad valorem* duty in respect of the *net* Estate is less than the fixed duty [see pars. 70 and 72], and it is desired to pay the smaller duty, the Form A–3 or A–4, whichever is appropriate, should be used and not the Form B–2.

A–4. Inland Revenue Affidavit for Probate or Administration where the property in respect of which Estate Duty is payable on the death of the deceased consists exclusively of personal property situate in the United Kingdom, and passing under the deceased's will or intestacy ; *except* where the net value exceeds £100, but the *gross* value does not exceed £500, *and* the fixed duty of 30s. or 50s. is to be paid.

No. 16. Summary of Duty and Interest. To accompany Form A–4.

A–5. Inland Revenue Affidavit for second or subsequent grants, where the property was within the operation of a prior grant. Where it was not so, the same form as for an original grant should be used.

D–1. (In Duplicate). Corrective affidavit.

Where the deceased died BEFORE *the 1st January*, 1898 : —As above, *except* that A–1, and B–1 replace A–3 and B–2 respectively.

ACCOUNTS :—

C–1. (In Duplicate).—Account of property which passed on the death, but the Estate Duty whereon was not paid on the Inland Revenue affidavit.

C–2. (In Duplicate).—Account for Settlement Estate Duty.

C–3. Account for instalment of Estate Duty and Settlement Estate Duty.

D–2. (In Duplicate).—Corrective account.

GENERAL.

A–4. INSTRUCTIONS AS TO PAYMENT OF ESTATE DUTY

All the Forms can be obtained of any Collector of Inland Revenue, or by personal application at the Legacy and Succession Duty Office, Somerset House, London, W.C.

The Forms A–1, A–7, A–4, A–5, B–1 and B–2 can be obtained of any Probate Registrar.

All the Forms except A–5 can be obtained at any Money Order Post Office outside the Metropolitan Postal District.

Where a person dies on or before the 1st August, 1894, duties in force immediately prior to the commencement of the Finance Act, 1894, continue to be payable [see Sect. 21 (2)], and the above Forms are not applicable.

The Inland Revenue affidavit is to be delivered to the Probate Registrar on application for representation.

Accounts and corrective affidavits are to be delivered personally or by an agent at the Legacy and Succession Duty Office, Somerset House, London, W.C., or, *where duty is to be paid*, they may be sent there through the post. They will be examined, and instructions as to the amount of duty and how to pay it will be issued. *Where duty is to be returned* the corrective affidavit or account must be presented personally or by an agent at the Legacy and Succession Duty Office, with evidence in support of the claim, unless the case is simple, or the amount involved is small, when it will usually be dealt with through the post.

FORMS IN USE FOR THE PAYMENT OF LEGACY DUTY (see p. 135 *seq.*)

No. 1.—For specific Legacies, and for pecuniary Legacies payable out of Real and Personal Estate where the Deceased died prior to 1st July, 1888, or where the

Deceased died on or after that date payable wholly out of Personal Estate. For shares of residue, where the amount of the residue has been arrived at by a General Account on the Form No. 3, and (in duplicate) for an account supplemental to that account. (See No. 11.)

No. 2.—For Instalments of Legacy Duty on Annuities. (See No. 12.)

No. 3.—(In Duplicate).—For General Residuary Accounts.

No. 8.—(In Duplicate).—For the proceeds of sale or principal value of Real Property directed by will to be sold where the Deceased died before 1st July, 1888.

No. 11.—For pecuniary Legacies and shares of residue when payable out of a Blended Fund arising from Real Estate directed to be sold and Personal Estate, or when charged on Real Estate in aid of Personal Estate. To be used only where the Deceased died on or after 1st July, 1888.

No. 12.—For Instalments of Duty on Annuities where the Annuities are payable out of a Blended Fund arising from Real Estate directed to be sold and Personal Estate, or charged on Real Estate in aid of Personal Estate, and when the Deceased died on or after 1st July, 1888.

*No. 20.—For small estates under £100 in value, where upwards of £80 is deposited in a Savings Bank or due by a Friendly Society, and a certificate of exemption from Legacy Duty is required, to obtain payment of the money.

FORMS IN USE FOR PAYMENT OF SUCCESSION DUTY

(see p. 147 *seq.*)

No. 1.—For pecuniary Legacies payable wholly out of Real Estate or the proceeds of sale thereof, where the Deceased died on or after 1st July, 1888.

No. 2.—For Instalments of Duty on Annuities charged wholly on Real Estate by the will of any person dying on or after 1st July, 1888.

No. 4.—(In Duplicate).—For Personal Property under Settlement (including money charged upon or arising from the sale of Real Property, and the proceeds of

sale of Church Patronage) where the property is at once taken absolutely, or by different persons in succession, all liable to duty at the same rate, and the duty is chargeable upon the capital. (See also No. 1.)

No. 5.—(In Duplicate).—For Personal Property under Settlement chargeable by way of Annuity, including annuities charged on Real Property by deed.

No. 6.—(In Duplicate).—For Real Property, including Leaseholds, except where Form No. 6–1 is applicable.

No. 6–1.—(In Duplicate).—For Real Property, including Leaseholds, where the deceased died after the 1st August, 1894, and the Successor is *competent to dispose of* the property within the meaning of 57 and 58 Vict., c. 30.

No. 7.—For the second and subsequent Instalments of Duty on Real and Personal Property; to follow the Form No. 6.

No. 7–1.—Ditto No. 6–1.

No. 8.—(In Duplicate).—For the proceeds of sale or principal value of Real Property, directed to be sold or sold under a power. (See also No. 8 under "Legacy Duty.")

No. 9.—(In Duplicate).—For the cessor of terminable charges upon Real Property, including the cessor of dower.

No. 10.—(In Duplicate).—For the proceeds of sale of Timber.

No. 11.—See No. 11 under "Legacy Duty."

No. 12.—See No. 12 under "Legacy Duty."

*No. 19.—(In Duplicate).—For Duty payable in expectancy. This Form is not supplied until a commutation has been agreed to. Application should be made in writing to the Controller of Legacy and Succession Duties, Somerset House, London, W.C., stating the reason for the application (sale or mortgage), the full particulars of the property, the title, the names and dates of birth of the tenants for life and in remainder, and the gross amount of the sale money or the amount of the mortgage.

The following Table shows the basis on which, in the cases of male lives, the amount of the allowance is calculated in the case of persons killed in war :—

Age as at the last Birthday before Death	Normal Expectation of Life at time of Death	Proportion of Duty		Age as at the last Birthday before Death	Normal Expectation of Life at time of Death	Proportion of Duty	
		To be Paid	To be Remitted			To be Paid	To be Remitted
Years.	Years.			Years.	Years.		
15	46·263	·25218	·74782	43	25·720	·46492	·53508
16	45·445	·25840	·74160	44	25·028	·47461	·52539
17	44·636	·26470	·73530	45	24·340	·48442	·51558
18	43·833	·27110	·72890	46	23·654	·49442	·50558
19	43·041	·27758	·72242	47	22·975	·50453	·49547
20	42·259	·28411	·71589	48	22·298	·51479	·48521
21	41·484	·29075	·70925	49	21·626	·52520	·47480
22	40·717	·29746	·70254	50	20·963	·53568	·46432
23	39·963	·30422	·69578	51	20·306	·54625	·45375
24	39·215	·31107	·68893	52	19·651	·55701	·44299
25	38·473	·31802	·68198	53	19·007	·56780	·43220
26	37·739	·32504	·67496	54	18·369	·57868	·42132
27	37·011	·33218	·66782	55	17·739	·58964	·41036
28	36·288	·33940	·66060	56	17·119	·60063	·39937
29	35·570	·34674	·65326	57	16·505	·61172	·38828
30	34·854	·35421	·64579	58	15·901	·62281	·37719
31	34·153	·36168	·63832	59	15·309	·63389	·36611
32	33·447	·36936	·63064	60	14·726	·64499	·35501
33	32·742	·37719	·62281	61	14·153	·65609	·34391
34	32·037	·38521	·61479	62	13·592	·66714	·33286
35	31·330	·39339	·60661	63	13·044	·67813	·32187
36	30·627	·40172	·59828	64	12·505	·68910	·31090
37	29·920	·41027	·58973	65	11·979	·69998	·30002
38	29·217	·41894	·58106	66	11·467	·71073	·28927
39	28·514	·42781	·57219	67	10·968	·72137	·27863
40	27·810	·43687	·56313	68	10·481	·73190	·26810
41	27·110	·44607	·55393	69	10·006	·74234	·25766
42	26·414	·45541	·54459				

The benefits of the relief as respects the first £5,000 are to be apportioned rateably among the several persons who would otherwise bear the duties remitted or repaid according to the amounts which they would bear and without regard to their respective rights of priority. [See Death Duties (Killed in War) Act, 1914, Sect. 1 (2)].

The relief afforded to the persons indicated above by Section 15 of the Finance Act, 1914 (see clause 66 (v.)) is to be under that section if such relief would be greater than that afforded by Section 1 of the Death Duties (Killed in War) Act, 1914, but in other cases, the relief afforded by the said Section 15 is not to apply to any Estate Duty to which the said Section 1 applies. [See Death Duties (Killed in War) Act, 1914, Section 1 (3)].

Where the Commissioners of Inland Revenue are satisfied that Estate Duty has become payable on any property passing on the death of any person dying from wounds, etc., in the "present" war, and that, subsequently, Estate Duty has again become payable on the same property or any part thereof, as passing on the death of some other person so dying, the whole of the Estate Duty payable on the subsequent death in respect of the property so passing is to be remitted or repaid, and the property is not to be aggregated with any other property passing on the subsequent death for the purpose of determining the rate of Estate Duty. [See Death Duties (Killed in War) Act, 1914, Sect. 2 (1).] This sub-section applies whether or not on any subsequent death any property passes to the widow or lineal descendants or lineal ancestors, or brothers and sisters or the descendants of brothers and sisters of the deceased. [See Death Duties (Killed in War) Act, 1914, Sect. 2 (2), as extended by Sect. 44 of the Finance Act, 1918.]

☞ *Any application for the remission or repayment of duty must in the first instance, be made to the War Office or the Admiralty or as the case requires.*

In the case of persons dying after the 15th August, 1914, the rates of Estate Duty are according to the following scale :—

Principal Value of the Estate.				Rate per cent.	Marginal Estate.		
	£		£	£	£	s.	d.
	Does not exceed		100	0			
Exceeds	100	and does not exceed	500	1	101	0	3
,,	500	,, ,,	1,000	2	505	2	1
,,	1,000	,, ,,	5,000	3	1,010	6	3
,,	5,000	,, ,,	10,000	4	5,052	1	8
,,	10,000	,, ,,	20,000	5	10,105	5	4
,,	20,000	,, ,,	40,000	6	20,212	15	4
,,	40,000	,, ,,	60,000	7	40,430	2	2
,,	60,000	,, ,,	80,000	8	60,652	3	6
,,	80,000	,, ,,	100,000	9	80,879	2	6
,,	100,000	,, ,,	150,000	10	101,111	2	3
,,	150,000	,, ,,	200,000	11	151,685	7	11
,,	200,000	,, ,,	250,000	12	202,272	14	7
,,	250,000	,, ,,	300,000	13	252,873	11	4

Principal Value of the Estate.				Rate per cent.	Marginal Estate.		
£			£	£	£	*s.*	*d.*
Exceds. 300,000	and does not exceed		350,000	14	303,488	7	6
,, 350,000	,,	,,	400,000	15	354,117	13	0
,, 400,000	,,	,,	500,000	16	404,761	18	2
,, 500,000	,,	,,	600,000	17	506,024	2	0
,, 600,000	,,	,,	800,000	18	607,317	1	6
,, 800,000	,,	,,	1,000,000	19	809,876	10	11
,, 1,000,000	..	..	.. ..	20	1,012,500	0	0

In the case of persons dying on or after the 31st July, 1919, the rates of Estate Duty are according to the following scale :—

Principal Value of the Estate.				Rate per cent.	Marginal. Estate.		
£			£	£	£	*s.*	*d.*
	Does not exceed		100	0			
Exceeds 100	and does not exceed		500	1	101	0	3
,, 500	,,	,,	1,000	2	505	2	1
,, 1,000	,,	,,	5,000	3	1,010	6	3
,, 5,000	,,	,,	10,000	4	5,052	1	8
,, 10,000	,,	,,	15,000	5	10,105	5	4
,, 15,000	,,	,,	20,000	6	15,159	11	6
,, 20,000	,,	,,	25,000	7	20,215	1	1
,, 25,000	,,	,,	30,000	8	25,271	14	9
,, 30,000	,,	,,	40,000	9	30,329	13	2
,, 40,000	,,	,,	50,000	10	40,444	8	11
,, 50,000	,,	,,	60,000	11	50,561	16	0
,, 60,000	,,	,,	70,000	12	60,681	16	5
,, 70,000	,,	,,	90,000	13	70,804	12	0
,, 90,000	,,	,,	110,000	14	91,046	10	3
,, 110,000	,,	,,	130,000	15	111,294	2	5
,, 130,000	,,	,,	150,000	16	131,547	12	5
,, 150,000	,,	,,	175,000	17	151,807	4	7
,, 175,000	,,	,,	200,000	18	177,134	3	0
,, 200,000	,,	,,	225,000	19	202,469	2	9
,, 225,000	,,	,,	250,000	20	227,812	10	0
,, 250,000	,,	,,	300,000	21	253,164	11	2
,, 300,000	,,	,,	350,000	22	303,846	3	1
,, 350,000	,,	,,	400,000	23	354,545	9	2
,, 400,000	,,	,,	450,000	24	405,263	3	2
,, 450,000	,,	,,	500,000	25	456,000	0	0
,, 500,000	,,	,,	600,000	26	506,756	15	2
,, 600,000	,,	,,	800,000	27	608,219	3	7
,, 800,000	,,	,,	1,000,000	28	811,111	2	3
,, 1,000,000	,,	,,	1,250,000	30	1,028,571	8	7
,, 1,250,000	,,	,,	1,500,000	32	1,286764	14	2
,, 1,500,000	,,	,,	2,000,000	35	1,569,230	15	5
,, 2,000,000	..	..	.. ..	40	2,166,666	13	4

In the case of persons dying after 30th June, 1925, the following scale set out in the fourth Schedule to the Finance Act, 1925, applies :—

Principal Value of the Estate.					Rate per cent. of duty.
	£			£	
Exceeding	100	and not exceeding		500	1
,,	500	,,	,,	1,000	2
,,	1,000	,,	,,	5,000	3
,,	5,000	,,	,,	10,000	4
,,	10,000	,,	,,	12,500	5
,,	12,500	,,	,,	15,000	6
,,	15,000	,,	,,	18,000	7
,,	18,000	,,	,,	11,000	8
,,	21,000	,,	,,	15,000	9
,,	25,000	,,	,,	30,000	10
,,	30,000	,,	,,	35,000	11
,,	35,000	,,	,,	40,000	12
,,	40,000	,,	,,	45,000	13
,,	45,000	,,	,,	50,000	14
,,	50,000	,,	,,	55,000	15
,,	55,000	,,	,,	65,000	16
,,	65,000	,,	,,	75,000	17
,,	75,000	,,	,,	85,000	18
,,	85,000	,,	,,	103,000	19
,,	100,000	,,	,,	120,000	20
,,	120,000	,,	,,	140,000	21
,,	140,000	,,	,,	170,000	22
,,	170,000	,,	,,	200,000	23
,,	200,000	,,	,,	250,000	24
,,	250,000	,,	,,	325,000	25
,,	325,000	,,	,,	400 000	26
,,	400,000	,,	,,	500,000	27
,,	500,000	,,	,,	750,000	28
,,	750,000	,,	,,	1,000,000	29
,,	1,000,000	,,	,,	1,250,000	30
,,	1,250,000	,,	,,	1,500,000	32
,,	1,500,000	,,	,,	2,000,000	35
,,	2,000,000	,,	,,	—	40

By Section 23 of the Finance Act, 1925.—(1) Where an estate in respect of which estate duty is payable on the death of a person dying after the commencement of this Act comprises or consists of agricultural property, the estate duty payable in respect of the agricultural property shall, instead of being charged on the principal value thereof at the appropriate rate payable under this Act, be charged as follows, that is to say, the duty shall be charged on the agricultural value of the property at the appropriate rate payable under the scale of rates set out in the third Schedule to the Finance

Act, 1919, and shall be charged on the amount by which the principal value of the agricultural property exceeds the agricultural value thereof (in this Act referred to as "the excess principal value") at the appropriate rate payable under the scale set out in the fourth Schedule to this Act.

(2) For the purposes of this section the agricultural value of agricultural property shall be taken to be the value which the property would bear if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property, decreased by the value of any timber, trees, wood or underwood growing thereon.

(3) Where any agricultural property is subject to a mortgage, debt or incumbrance in respect of which an allowance is by law to be made for the purposes of estate duty, the mortgage, debt or incumbrance shall, for the purposes of this section, be apportioned between the agricultural value of the property and the excess principal value of the property in proportion to the amounts of those two values respectively.

(4) In this section the expression "agricultural property" means agricultural property within the meaning of paragraph (*g*) of subsection (1) of section twenty-two of the Finance Act, 1894, and the expression "appropriate rate" means the rate of estate duty appropriate to the principal value of the estate passing on the death of the deceased.

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